

**STATE OF CALIFORNIA**  
**Department of Housing and**  
**Community Development**



**Housing Element Questions and Answers**  
**A Guide to the Preparation of Housing Elements**

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# HOUSING ELEMENT QUESTIONS AND ANSWERS

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## **PUBLIC PARTICIPATION** **Government Code Section 65583(c)(6)(B)**

**Q1:**

*Why is public participation critical to updates?*

**A:**

Housing issues affect the entire community -- residents and employers, the public and private sectors. The public participation requirement of housing element law presents an opportunity to engage constituents in a dialogue – defining problems and creating solutions.

Public participation involves soliciting input from all citizens. The inclusion of community stakeholders in the housing element public participation process helps ensure appropriate housing strategies are more efficiently and effectively developed, implemented, and evaluated. An inadequate public participation process may lead to community conflict or in worse case scenarios, anti-development initiatives, and NIMBYism.

**Q2:**

*Who should be included in the public participation process?*

**A:**

Current and potential beneficiaries of housing programs and services and their advocates (lower-income representatives, tenants of affordable complexes – especially those at-risk of conversion, groups targeted for special housing needs consideration, community based organizations, health and human service providers, homeless shelter and service providers, etc.) are invaluable sources of housing element information and data. These groups and their representatives are a good source of information for the required needs analyses, especially when revisions are required in between census updates. For example, senior citizen organizations can usually describe the availability of services for seniors. Legal Services organizations may be able to describe anecdotal information on the number of complaints about fair housing issues, substandard housing conditions, and other housing related problems.

Various community stakeholders including neighborhood leaders, local businesses, major employers, and environmentalists can be mobilized through the housing element participation process to collaborate on housing issues. Developing a variety of housing types for all income groups appropriate to each unique community is a major community-wide undertaking. Responsible public participation can serve to build consensus among constituents for the design and implementation of realistic housing programs. Committed public participants can support an adopted housing element and deflect opposition to future housing projects.

Development professionals including local builders, for- and non-profit developers, architects, trade labor unions, realtors, mortgage bankers and brokers, area lenders, and others can also be significant contributors to the development of an effective housing element. They can provide base-line data (e.g., land and construction costs, current for-sale housing prices and rents, area mortgage lending and availability) and describe practical experience regarding development opportunities and barriers in the community.

## Q3:

*What actions can a local government undertake to achieve effective public participation of all economic segments of the community?*

## A:

An effective public participation process should begin at the outset of the housing element update process. Members of the community should be involved in evaluating the accomplishments of the previous element, identifying current needs, resources and constraints, as well as assisting in the development of community goals, policies and actions. Most communities engage residents in the process prior to preparing the draft element.

In addition to holding required public hearings at the planning commission and city council or board of supervisor level, an adequate and effective citizen participation process must include additional steps to ensure the public participation of all economic segments of the community (including low- and moderate-income households). Many local governments have found the following actions useful in facilitating an effective participation process:

- \* Establish an ongoing public participation process. This may involve establishing an ad-hoc, appointed, or volunteer task force and/or citizen advisory committee to oversee the status of housing plans and programs. Some jurisdictions conduct open annual housing study sessions and/or hold periodic neighborhood based meetings to increase participation. Alternatives to traditional public meetings/hearings include more “hands-on” approaches like sponsoring “open houses” and/or conducting tours of successful affordable housing projects.
- \* Conduct special advertising and outreach campaigns to targeted church groups, low-income organizations, seniors, and community and service groups. Post notices regarding public meetings about the housing element at community centers, libraries, city hall, social service offices, on buses, and throughout the community in public places. Information can also be included in local utility bills or other publications.



# PUBLIC PARTICIPATION

- \* Based on the diversity of the community, consider distributing public participation and housing element information in languages other than English.
- \* Updated housing information and data, as well as meeting and planning schedules, can also be posted on government websites. Interactive information technology can speed up input gathering and broaden the base of participation for citizens who have access to the Internet (computers are now available at most public libraries).

Local governments that prepare a Consolidated Plan in order to directly receive federal housing and community development funds are also required to conduct a thorough citizen participation process. Local redevelopment agencies are required to hold public hearings on implementation and affordable housing production plans (Health and Safety Code Section 33413(b)(4)).

Many communities combine housing element, redevelopment, and Consolidated Plan, including the Impediments to Fair Housing, and Public Housing Agency Plans' public participation processes. Since the requirements are similar and planning consistency facilitates implementation (and in many cases is required), the jurisdiction should consider coordinating the drafting, public participation process and implementation of these and other related plans. Coordination in the development of all of these plans helps local governments avoid duplication of effort and ensures consistency in planning.

**Q4:**

*How can the update process enhance community and regional planning efforts?*

**A:**

The housing element process can be used to implement sound housing and community development planning. Creating sustainable and livable communities that enhance the quality of life is an important goal. The update process can serve as a vehicle for advocating "smart growth" housing strategies. Promoting more compact development, recycling, mixed use and infill, pedestrian-friendly, and transit-oriented developments allow communities to take advantage of existing infrastructure, revitalize older neighborhoods and downtowns, improve air quality, reduce traffic congestion, and curb urban sprawl. Incorporating these concepts into the housing element update helps ensure their effective implementation.

The update process can also create a strong base of support for local officials when issues or controversies arise during implementation of the housing element. Community residents and stakeholders who have contributed to the element's development are more likely to attend public hearings and meetings and support local officials in their implementation efforts.

# PUBLIC PARTICIPATION



## *State Department of Housing and Community Development*

The housing element update process can function as an informational and public relations tool to better educate the community on who really needs affordable housing (e.g., service workers, teachers, fire fighters, first-time homebuyers, those at risk of homelessness, etc.) and how an adequate supply of safe and affordable housing and the development of a variety of housing types provides significant economic and social benefits to the entire community. Planning for an adequate supply of housing to keep pace with both population and job growth is integral to the overall economic vitality of a community and critical to the quality of life of all residents.



# REVIEW AND REVISE

## **REVIEW & REVISE**

### **Government Code Section 65588**

#### ***Q5:***

*Why is the periodic review important?*

#### ***A:***

The review and evaluation of the previous housing element is the critical first step in an effective housing element update process. A thorough review and revision of the previous element facilitates a more comprehensive update and ensures the element can be more effectively and efficiently implemented in the current planning period.

The “review and revise” evaluation is a three-step process:

- \* **Section 65588(a)(2): “Effectiveness of the element”** - Review the results of the previous element’s goals, objectives, policies, and programs. The results should be quantified where possible (e.g., the number of units rehabilitated), but may be qualitative where necessary (e.g., mitigation of governmental constraints).
- \* **Section 65588(a)(3): “Progress in implementation”** - Compare what was projected or planned in the previous element to what was actually achieved. Analyze the significant differences between them. Determine where the previous housing element met, exceeded, or fell short of what was anticipated.
- \* **Section 65588(a)(1): “Appropriateness of goals, objectives and policies”** - Based on the above analysis, describe how the goals, objectives, policies and programs in the updated element are being changed or adjusted to incorporate what has been learned from the results of the previous element.

Many communities cross reference and use the annual progress report (Government Code Section 65400(b)(1)) as a useful source of information for review of the previous housing element (see Q59 on page 50).

#### ***Q6:***

*How often should it be revised or updated?*

#### ***A:***

The statute requires at least five-year updates in accordance with the statutory schedule. Periodic review of the housing element is also necessary in order to determine whether a revision is required prior to the five-year update cycle. If the locality determines that one or more of the following conditions exist, it may be appropriate to revise the housing element between statutory updates.

# **R E V I E W A N D R E V I S E**

- \* New policies, regulations, or requirements are proposed for adoption that may inhibit the communities' ability to comply with housing element law or effectively implement housing programs (e.g., growth control ordinances or measures).
- \* The stated housing goals, objectives and policies are not effective in providing housing for the existing and projected needs of all economic segments of the community.
- \* Housing units are not being produced in adequate numbers and at the necessary price levels to achieve the stated housing goals and quantified objectives.
- \* A comprehensive general plan update is underway or other portions of the general plan have been amended, making it necessary to revise the housing element to achieve internal consistency pursuant to Government Code Section 65583 (c)(6)(B).
- \* Significant new development not contemplated at the time of the regular revision of the element has occurred or is planned.

## ***EXISTING HOUSING NEEDS***

***Government Code Section 65583(a)(1)-(2)***

***Q7:***

***What constitutes an adequate analysis of existing housing needs?***

***A:***

Existing housing needs include current basic information such as total households by household income, vacancies, and lower-income households overpaying for housing. A thorough community profile typically includes, the following quantification and qualitative data and descriptive household information:

- \* Total Population and demographics (e.g., age, sex, race/ethnicity, etc.) - Many jurisdictions also discuss population changes overtime.
- \* Total number of households in the community - The Department of Finance (DOF) prepares annual population estimates including population, households and dwelling units. The E-5 report is available yearly in May. See website [www.dof.ca.gov](http://www.dof.ca.gov).
- \* Tenure characteristics - The number of renter and owner households in the community.

In addition, the statute specifically requires the housing element to include an assessment of households overpaying:

- \* Compare level of payment with ability to pay - In comparing level of payment with ability to pay, the number of lower-income households (those at or below 80 percent of the median income) who are overpaying for housing should be quantified.

Overpaying is defined in terms of a percentage of the gross household income a household spends for housing including utilities. Overpaying for housing is also known as the housing cost burden. Thirty percent of gross household income is the standard affordability level. Severe overpaying occurs when households pay 50 percent or more of their gross income for housing. The element should estimate the number of lower-income households paying more than 30 percent of their income for housing and the number of households who pay 50 percent or more of their gross income for housing. This information is available by tenure (owner/renter).

**Q8:**

*What housing characteristics should be documented and analyzed?*

**A:**

- \* Total number of housing units - Where possible, the element should describe the distribution of units by type (single-family, multifamily, mobilehomes), as well as any changes in that distribution since the last housing element update.
- \* The condition of the housing stock including the total number of substandard units (e.g., those in need of rehabilitation [repair] and those in need of replacement [demolition]) - The number of units to be rehabilitated and/or replaced may be estimated from a recent (within the last five years) windshield survey or sampling, estimates from the local building department, knowledgeable builders/developers in the community, nonprofit housing developers or organizations and redevelopment agencies. Estimates can also be derived from census data such as percentage of units built before 1960, which can serve as an estimate of the maximum rehabilitation need.
- \* The incidence of overcrowding - The Census defines an overcrowded unit as one occupied by 1.01 persons or more per room (excluding bathrooms and kitchens). Units with more than 1.5 persons per room are considered severely overcrowded. Localities are to estimate the number of households that live in overcrowded and severely overcrowded units. The incidence of overcrowding frequently parallels the incidence of large households.

Many communities also analyze other household and housing characteristics:

- \* Median area sales prices and typical rents including area Fair Market Rents (FMRs);
- \* Vacancy rates for homes and rentals; and
- \* Fair housing/fair lending complaints filed with local, State and federal fair housing organizations and departments.

***Sources of information and data related to existing housing needs are included in the Appendix.***

## **SPECIAL HOUSING NEEDS**

***Government Code Section 65583(a)(6)***

**Q9:**

*How do special housing needs differ from other housing needs and why is an analysis of special housing needs important?*

**A:**

Special needs are those associated with relatively unusual occupation or demographic groups which call for very specific program responses, such as preservation of residential hotels or the development of four bedroom apartments. The statute specifically requires analysis of the special housing needs of the elderly, the disabled, female headed households, large families, farmworkers and homeless persons and families.

A thorough analysis of the special needs groups helps a locality identify groups with the most serious housing needs in order to develop and prioritize responsive programs. A special needs assessment starts with general knowledge of the community's demographics. The housing element should analyze the needs of each group specifically mentioned in statute as well as any other group the locality deems appropriate. The analysis should include a discussion of the nature of the special housing need of each group as well as quantification of the need.

**Q10:**

*What information should be included in an analysis of special housing needs and where can a locality find information about special housing needs?*

**A:**

A thorough analysis would include the following:

- \* A quantification of the total number of persons, households (e.g., 600 elderly households).
- \* A quantification and qualitative description of the need. For instance, in the example listed above, of the 600 elderly households, census data reveals that 400 are homeowners and 200 are renters and that 250 of all elderly households have incomes below the poverty level. A qualitative description of the need would include a description of the potential housing problems faced by the group. For example, the analysis of elderly need might show that an estimated 30 percent of elderly households below the poverty level live in substandard housing, indicating a housing rehabilitation need. Most local governments consult information available from service providers, housing or service waiting lists, and data on income and housing costs to identify special housing needs.
- \* Identification of potential program or policy options and adequate resources to address the need.

***Sources of information and data on special needs populations are included in the Appendix.***

## **Q11:**

*What information should be included in the analysis of homeless need to facilitate the identification of adequate site for emergency shelters and transitional housing?*

## **A:**

A thorough analysis would include:

- \* An estimate or count of the daily average number of persons lacking permanent shelter. Wherever possible, this figure should be divided into single males and females, and families (one or more adults with children). These subgroups require significantly different types of shelter.
- \* As local data allows, also include the mentally ill, developmentally disabled, substance abusers, survivors of domestic violence, and other categories of homeless considered significant by the jurisdiction.
- \* An inventory of the number, approximate location, and type of existing shelter beds, hotel/motel vouchers, and units of transitional housing available. Present shelter resources by type (e.g., family shelter beds, homeless adult female housing, transitional living units, etc.).
- \* An estimate, derived from the figures above, of the number of additional beds or shelters and transitional housing units needed.

## **Q12:**

*What information should be included in the analysis of farmworkers to facilitate the identification of adequate sites for farmworker housing?*

## **A:**

The element should estimate the number of permanent and migrant farmworkers within the community. The analysis should describe the zones where housing for farmworkers is allowed, evaluate whether sufficient opportunities for housing for migrant and permanent farmworkers exists, and describe any conditions on development.

The statute specifically encourages cities and counties to work cooperatively to identify and address farmworker housing needs.

If adequate sites for farmworker housing have not been identified, the element must include a program that provides farmworker housing uses by right (see Q45 in Section VI, page 35). This requirement was added as Chapter 967, Statutes of 1999.

## **AT-RISK ASSISTED HOUSING DEVELOPMENTS NEEDS ASSESSMENT** **Government Code Section 65583(a)(8)(A-D)**

**Q13:**

*What assisted housing must be inventoried?*

**A:**

Assisted housing developments are multifamily rental housing complexes that receive government assistance under any of the following federal, state, and/or local programs (or any combination of rental assistance, mortgage insurance, interest reductions, and/or direct loan programs) which are eligible to change to market-rate housing due to termination (opt-out) of a rent subsidy contract (e.g., Section 8), mortgage prepayment (e.g., FHA), or other expiring use restrictions (e.g., State or local programs) within the 5-year planning period of the housing element and the subsequent 5-year period.

- \* **Federal programs listed in subdivision (a) of Government Section 65863.10**  
**HUD Section 8** - U.S. Housing Act of 1937  
Lower-income Rental Assistance project-based programs:  
 (1) New construction, (2) Substantial or Moderate Rehabilitation, (3) Property Disposition, (4) Loan Management Set Aside (LMSA),  
 Section 101 Rent Supplements – U.S. Housing Act of 1965  
**HUD Section 221(d)(3) BMIR** Mortgage Insurance  
**HUD Section 236** Interest Reduction Payment Program  
**HUD Section 202** Direct Loans for Elderly or Handicapped – U.S. Housing Act of 1959 and HUD Section 811  
**HUD Section 213** Cooperative Housing Insurance  
**IRS Section 42** (Tax Credit Projects)  
**HUD Title II (ELIHPA)**  
**HUD Title VI (LIHPRHA)**
- \* **Rural Housing Services (formerly Farmer's Home Administration) 515 Rural Rental Housing Loans** – U.S. Housing Act of 1949
- \* **Federal Community Development Block Grant Programs**
- \* **State (e.g., HCD, CDLAC, TCAC and CHFA) and local mortgage revenue bond programs**
- \* **Local redevelopment agency units assisted with Redevelopment Low- and Moderate-Income Fund**
- \* **Local in-lieu fees and inclusionary housing programs**
- \* **Local density bonus and directly assisted units**



## **Q14:**

*What constitutes an adequate analysis of government assisted at-risk units?*

## **A:**

- A. Prepare an inventory of all units at-risk of conversion within the current planning period and subsequent 5-year period (e.g., 2000 – 2010).**

If there are no units at-risk in the locality during the ten-year period, complete the checklist in the Appendix. As part of the analysis, describe how the locality determined and verified no units are at-risk of conversion during the planning period and subsequent ten years.

List each development by project name and address, type of governmental assistance received, earliest possible date of change from low-income use, and the total number of elderly and non-elderly units that could be lost from the locality's low-income housing stock. Where a property has more than one subsidy type, analyze each type separately.

Contact HCD's Division of Housing Policy Development to confirm federally-assisted units with expiring/terminating Section 8 contracts or mortgage or mortgage insurance prepayments at (916) 445-4728 or access HCD's website [www.hcd.ca.gov/hpd/hrc/tech/presrv/](http://www.hcd.ca.gov/hpd/hrc/tech/presrv/). To determine the status of HCD's funded programs (Deferred Payment Rehabilitation Loan, California Natural Disaster Assistance, California Housing Rehabilitation Program Rental Component, Farmworker Housing Grant, and Special User Housing Rehabilitation Loan) projects with expiring affordability controls, contact HCD's Division of Community Affairs at (916) 322-1560.

Contact the California Housing Finance Agency (CHFA) to inquire about bond-financed projects with terminating use restrictions at [www.calhfa.ca.gov](http://www.calhfa.ca.gov)

Contact Rural Housing Services to confirm the status of Section 515 rural housing with expiring use restrictions at website <http://www.rurdev.usda.gov>

The first projects developed using the State Low Income Tax Credits with expiring use restrictions within the ten-year timeframe should also be inventoried.

Contact the California Tax Credit Allocation Committee (TCAC) through the State Treasurer's Office at [www.treasurer.ca.gov](http://www.treasurer.ca.gov) to confirm tax credit units at-risk.

Contact the California Debt Limit Allocation Committee (CDLAC) also through the State Treasurer's Office to confirm revenue bond-financed at-risk units.



**B. Assess the conversion risk**

Risk of conversion and displacement of low-income tenants varies significantly from project to project depending on market, ownership, and project-based factors (size of units, location, condition of property, etc.).

Assess overall potential conversion risk based on the total number and type of units at-risk, total number of potentially displaced households, and the economic condition of the local housing market, especially in areas with high housing costs and/or low vacancy rates.

Determine the condition of existing assisted housing developments to facilitate the replacement versus preservation cost analysis. Depending on the age and condition of the project, rehabilitation costs often have to be added to the acquisition costs in order to preserve the project.

**C. Estimate and analyze the costs of replacement versus preservation for units at-risk in the current five-year planning period.**

This analysis determines whether replacement (new construction), or preservation (acquisition and rehabilitation, and/or direct rental subsidy commitments) will be the most economical approach to preserving at-risk units. Current local market rents are key to determining whether use restrictions and affordability controls can be feasibly extended under HUD's Mark-to-Market (where subsidized units have contract rents above market) or Mark-Up-To-Market (where subsidized units have contract rents below market) or other State (tax credit, revenue bonds, HCD's multifamily program, etc.) or local preservation programs.

Estimate the costs of producing new rental housing (comparable in size and rent levels to existing at-risk units) to replace the units that could change from low-income use. Use current land costs and either current construction costs (square footage rates for multifamily development) or the actual cost of recently completed units.

Estimate the cost of preserving the identified assisted housing developments including acquisition and rehabilitation costs long-term affordability controls and project based rent subsidies.

A project-by-project cost estimate is not required (Section 65583(a)(8)(B)).

**D. Identify entities qualified to preserve at-risk units**

Identify local public agencies, public or private nonprofit corporations, and for-profit organizations with the legal and managerial capacity to acquire and manage at-risk projects (Section 65583(a)(8)(C)). New purchasers must agree to long-term affordability controls.

Contact potential qualified entities to assess their interest in acquiring and managing at-risk properties. Contact HCD for a list of eligible entities interested in participating in the State's Opportunity to Purchase and Right-of-First-Refusal Program pursuant to Government Code Section 658363.11 as amended January 1, 2001 or to refer potential local qualified entities who wish to be placed on the list. A copy of the qualified entities list and the certification form are available on the website.

**E. Identify financing and subsidy resources**

Identify and consider the use of all federal, State, and local financing and subsidy programs as preservation resources. At minimum include federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency, and the administrative fees received by a housing authority operating within the community as well as other available local financing/subsidy programs. Also include HOME funds as a potential source of revenue.

Identify the amount of funds under each program, which have not been legally obligated for other purposes and could be available for use in preserving assisted housing development (Section 65583(a)(8)(D)).

Indicate which of all available federal, State, and local financing and subsidy programs, will be targeted for specific preservation program actions (e.g., replacement, preservation through acquisition, extended affordability controls, regulatory actions, direct rental subsidies, rehabilitation, tenant and sponsor technical assistance, etc.).

***A No At-Risk Units Certification Checklist is included in the Appendix.***

## **PROJECTED HOUSING NEEDS**

### **Government Code Section 65583(a)(1)**

Housing element law requires a quantification of each jurisdiction's existing and projected housing needs. This is accomplished through the regional housing need allocation (RHNA) process pursuant to Government Code Section 65584. The city or county's share of the RHNA, as determined by their Council of Governments (COG) and HCD, is the projected housing need for the planning period of the housing element. Each city's RHNA is distributed among four income categories to address the required provision for planning for all income levels, consistent with the income definitions of State law. To accommodate the RHNA, the element must demonstrate site development capacity equivalent to, or exceeding, the projected housing need, to facilitate development of a variety of types of housing for all income levels.

### ***Q15:***

*What should be included in the population and employment trend analysis?*

### ***A:***

A complete description of the locality's most recent population estimate and general characteristics of the employment market is important in portraying the local housing market influences and the demand for housing. This information provides insight into the types of jobs and industries in the community and by inference the incomes associated with employment opportunities; proposed new economic development activities, and future housing needs generated by any new employment opportunities.

The Regional Housing Needs Allocation (RHNA) usually incorporates both population and employment trends, but may not have taken into account recent local factors such as annexations, adoption of a redevelopment plan, or opening of a new business park. In these situations, the locality should analyze the impact of these recent trends on its total projected housing need to determine if, and how, the locality should plan for additional growth through changes to its housing objectives and/or programs.

### ***Q16:***

*What household income categories are included in a locality's RHNA?*

### ***A:***

The four income category definitions used in the RHNA distribution are those defined in Title 25, Sections 6926, 6928, 6930, and 6932, of the California Code of Regulations. These income categories are based on definitions established by the U.S. Department of Housing and Urban Development (HUD) and State Health and Safety Code Sections 50079.5, 50105, and 50093.

# HOUSING NEEDS ASSESSMENT



- \* **Very low income** – within 50 percent of the area median family income with adjustments for usually high or low area income and household size.
- \* **Low or Lower income** – between the very low-income limit and 80 percent of the area median family income with adjustments for usually high or low area income or housing costs and for household size.
- \* **Moderate income** – between the lower income limit and 120 percent of the area median family income with adjustments for usually high or low area income or housing costs and for household size.
- \* **Above moderate income** – exceeding the moderate-income limit adjusted for household size.

These income groups are consistent with the definitions of low- and moderate-income households used in many federal and state programs, although definitions for some federal programs differ. More information on the current income limits is available on HCD's website at [www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html](http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html)

## **RESOURCES: LAND INVENTORY**

Government Code Section 65583(a)(3)

**Q17:**

*What is the purpose of the land inventory?*

**A:**

The purpose of the land inventory is to identify specific sites suitable for residential development in order to compare the locality's new construction need by affordability category with its residential development (total supply) capacity. A thorough land inventory will help the locality determine if additional governmental actions are needed to provide enough sites with appropriate zoning, development standards, and infrastructure capacity to accommodate its new construction need as required by Section 65583(c)(1).

**Q18:**

*What land is considered "suitable" for residential development?*

**A:**

Land "suitable for residential development" has characteristics that make the sites appropriate for housing construction. These characteristics include physical features (freedom from flooding, seismic hazards, chemical contamination, other environmental constraints, and slope instability or erosion) and location (proximity to transit, job centers, and public and community services).

Sites not currently planned and zoned for residential use may be included in the inventory if they are otherwise suitable for residential development and the element includes program actions to change the land use within the current planning period.

**Q19:**

*What constitutes an "analysis of the relationship of zoning" to these sites?*

**A:**

The analysis of the relationship of suitable sites to zoning provides a means for determining the realistic number of dwelling units that could actually be constructed on those sites within the current planning period of the housing element. The analysis should also identify the zones the locality believes can accommodate its share of the regional housing need for all income levels, including the needs of low- and moderate-income households. The analysis should reflect:

- \* Comparison of general plan land-use designations to zoning.
- \* An evaluation of permitted densities for accommodating the localities share of the regional housing need for lower- and moderate-income households.
- \* Actual densities of recent residential developments compared to their zoned densities.

The housing element land inventory and analysis will allow the locality to determine whether current zoning and densities make sufficient residential land available to accommodate the new construction need in total and by income level. If the inventory is deficient in either respect, the locality should determine what specific actions, such as modification of zoning, will be necessary to increase the availability of sites at appropriate densities (Section 65583(c)(1)).

## Q20:

*What information should be included in the land inventory for a community with very little vacant land?*

## A:

In communities with limited vacant land, the inventory should identify and analyze sites available for redevelopment/recycling to residential or a more intense use, infill, and/or non-residential sites that may be appropriate to redesignate for residential use. Examples of land with potential for recycling may include scattered sites suitable for assembly, publicly-owned surplus land, portions of blighted areas with abandoned or vacant buildings, areas with mixed-used potential, substandard or irregular lots which could be consolidated, and any other suitable underutilized land.

The land inventory should describe the acreage and current zoning of such sites, recent or historical development trends, current or proposed development standards, realistic development capacity within the planning period of the element, and any incentives or policies to facilitate their development, redevelopment or reuse.

## Q21:

*What constitutes an "analysis of the relationship of public facilities and services to these sites"?*

## A:

The analysis is a means of determining the current or proposed timing of availability of essential public facilities and services (e.g., sewer and water system trunklines and treatment facilities, roads, and storm drainage facilities) for sites identified for residential development. Existing capacity and capacity that will be provided during the current planning period of the element should be described and analyzed.

Any phasing plans of a relevant specific plan, development agreement or Capital Facilities Financing Plan should be described. Through a complete infrastructure capacity analysis, the locality will be able to identify where facilities and services are lacking in order to establish program actions (capital improvement plans, financing through general obligation or special district bonds, etc.), that will permit the development of sufficient units to meet the new construction objectives within the planning period.



The analysis of infrastructure capacity also allows local governments to evaluate and plan strategies to use existing infrastructure more efficiently and effectively. Combining the analysis of adequate sites with infrastructure capacity encourages comprehensive planning to identify opportunities to encourage development where public facilities already exist or could be extended to reduce the need to expand infrastructure outside currently served areas. Adequate sites strategies that focus on infill and redevelopment promote the efficient use of existing infrastructure and minimize the premature conversion of nonurbanized land for development.

## Q22:

*What time frame should be used in identifying land suitable for residential use?*

## A:

The housing element should identify sites that are or will be made available for residential use within the planning period of the element. Sites identified that require rezoning may be included as an adequate site as long as a program for accomplishing any need rezoning is included in the element.

## Q23:

*How does a locality determine if its current sites are adequate?*

## A:

The locality's sites are adequate if the land inventory (Section 65583(a)(3)) demonstrates sufficient realistic capacity at appropriate densities and development standards to permit development of a range of housing types and prices to accommodate the community's share of the regional housing need by income level.

A two-part analysis is necessary to make this determination:

- \* Can the realistic development capacity of suitable land, which is or will be served by facilities and infrastructure, accommodate the locality's total new construction need by income group over the next five years? (Total Supply)
- \* Are these available sites appropriately zoned (considering local development standards and land costs) for a variety of housing types (single-family, multifamily, mobilehomes, etc.) and at appropriate densities to facilitate the development of housing to meet the locality's regional housing need by income level category, including the need for very low- and low-income households?

If the amount or variety of a jurisdiction's residential development capacity is less than its new construction need for any income level, a shortfall exists. In such a case, the housing element must include a program to increase residential development capacity or increase the capacity to accommodate the regional share by income level.

Many jurisdictions find it useful to contact area developers to request input on the minimum densities necessary and the feasibility of the development of particular sites.

## Q24:

*Does the land use element of the general plan contain the necessary information to complete the land inventory?*

## A:

The land-use element contains some, but not all, information necessary for the housing element land inventory. The land-use element usually identifies the proposed general distribution and location of land-use over a ten- to twenty-year general plan time frame. Often times the land-use element contains parcels that are within the jurisdictions' planning area (sphere of influence) but will not be within the locality's boundaries during the planning period. The housing element land inventory provides a current and comprehensive analysis of sites suitable for residential development over the housing element's shorter five-year time frame.

## Q25:

*What level of environmental review is required to assure sites are available for residential development?*

## A:

If it is anticipated that land uses will change and land will be rezoned within the current planning period in order to provide suitable sites for residential development, a mitigated negative declaration, if not a full Environmental Impact Report (EIR), may be required in the environmental review of the housing element.

A comprehensive environmental review of the housing element may preclude the need for later environmental review on specific plans or individual affordable housing projects. For example, portions of the land-use inventory may be covered by a specific plan with an EIR which would exempt further environmental preview pursuant to Government Code Section 65457.



## **GOVERNMENTAL CONSTRAINTS**

**Government Code Section 65583(a)(4)**

### ***Q26:***

*What is considered a governmental constraint?*

### ***A:***

Although local ordinances and policies are enacted to protect the health and safety of citizens and further the general welfare, it is useful to periodically reexamine local ordinances/policies to determine whether, under current conditions, they are accomplishing their intended purpose or in practice constitute a barrier to the maintenance, improvement or development of housing for all income levels.

Such an examination may reveal that in practice the ordinance/policy may require performance standards and/or restrictions that operate as a governmental constraint. The analysis may also show that certain policies have a disproportionate or negative impact on the development of particular housing types (e.g., multifamily) or on housing developed for low- or moderate-income households.

Ordinances, policies or practices which have the effect of excluding housing affordable to low- and moderate-income households may also violate State and federal anti-discrimination laws which prohibit land-use requirements that discriminate or have the effect of discriminating against affordable housing.

The analysis should describe past or current efforts to remove governmental constraints. Where the analyses identifies that constraints exist, the element should include program responses to mitigate the effects of the constraint.

### ***Q27:***

*What should be analyzed as potential governmental constraints?*

### ***A:***

The element should analyze each of the following policies as described in the statute, and others as deemed appropriate by the locality. Each analysis should use specific objective data, quantified where possible. A determination should be made for each potential constraint as to whether it poses as an actual constraint.

- \* **Land Use Controls:** Zoning (e.g., density, parking requirements, lot coverage, lot sizes, unit sizes, design criteria, floor area ratios, setbacks), moratoria and prohibitions against multifamily housing developments, growth controls, urban growth boundaries, open space requirements, etc.

- \* **Codes and Enforcement:** Any local amendments to the State Housing Law or Uniform Building Code, the degree or type of enforcement. A strict code enforcement program or a code amendment, which specifies expensive materials and/or methods, can pose a significant constraint to housing development or maintenance.
- \* **On- and off-site improvement requirements:** Street widths, curb, gutter, and sidewalk requirements, water and sewer connections, and circulation improvement requirements. Describe any generally applicable level of service standards or mitigation thresholds.
- \* **Fees and exactions:** Permit, development and impact fees (e.g., park, school, open space, parking district, etc.), in-lieu fees, land dedication requirements (e.g., streets, public utility and other right-of-ways, easements, parks, open space, etc.) and other exactions imposed on developers. Describe any contribution or payment required as an authorized precondition for receiving any type of development permit.
- \* **Processing and permit procedures:** Types of permits, typical permit processing times, and standard approval procedures. Describe the types of permits, discretionary approval procedures, and processing time required for recent and current residential projects, including all permits applicable to residential development including overlay zones (e.g., Community Plan Implementation Zones, Hillside Overlay Zones, Environmentally Sensitive Areas, etc.). Other applicable regulations such as landscaping, design, planned districts, etc. should also be included. As part of this analysis, localities should compare the permit and approvals process for a typical single-family subdivision and a typical multifamily project.

## Q28:

*How should an adopted growth control measure be evaluated as a governmental constraint?*

## A:

Ordinances, policies, procedures, or measures imposed by the local government that specifically limit the amount or timing of residential development should be analyzed as potential governmental constraints and mitigated, where necessary. The analysis will vary depending on the nature of the measure. In general, the measure and its implementation procedures should specifically be described and analyzed for their impact on the cost and supply of housing.

For ordinances which control the number and timing of permits, the element should describe any permit allocation process, allocation timing, specific limits on the number of permits issued

per project type, and any affordable housing incentives in the allocation process. The method of determining the number of permits to be issued annually and the basis for this determination should also be included.

The analysis should demonstrate how the policy or ordinance accommodates the locality's current regional housing need allocation for all income groups. If not, the element must include a program to mitigate the impacts of the ordinance and allow accommodation of the total housing need (see page 38).

Examples of types of policies or requirements that should be analyzed include:

- \* Systematic (area-wide) residential downzoning
- \* Urban limit line, growth boundaries, or perimeter greenbelt
- \* Annexation restrictions
- \* Building permit or other residential development caps
- \* Voter approval for upzoning, rezoning or general plan changes
- \* Legislative super-majority for upzoning, rezoning or general plan changes
- \* Systematic changes to local height and FAR regulations
- \* Adequate public facilities ordinances

## **NONGOVERNMENTAL CONSTRAINTS**

*Government Code Section 65583(a)(5)*

**Q29:**

*If governmental constraints are factors that localities can control or influence, then by implication localities have no control over nongovernmental constraints. Why should they be analyzed?*

**A:**

Although nongovernmental constraints are primarily market-driven and generally outside direct government control, localities can significantly influence and offset the negative impact of nongovernmental constraints through responsive programs and policies. Analyzing specific housing cost components including the cost of land, construction costs, and the availability of financing assists the locality in developing and implementing housing and land-use programs that respond to existing local or regional conditions. While the price of new housing depends on some factors beyond a locality's control, local governments can create essential site preconditions (favorable zoning and development standards, fast track permit processing, etc.) that encourage and facilitate development of a variety of housing types and prices.

Community opposition to the development of affordable housing is another type of nongovernmental constraint that could be analyzed and added.



Under the Home Mortgage Disclosure Act (HMDA) lending institutions are required to publicly disclose the race, income and gender of home mortgage borrowers and the census tract in which the loans are made. Contact the National Community Reinvestment Coalition ([www.ncrc.org](http://www.ncrc.org)) for more information on fair lending.

Jurisdictions that prepare an Analysis of Impediments to Fair Housing Choice (AI), for the Consolidated Plan may be able to use information from that Plan about policies that make housing less available to the groups covered by the fair housing laws.

## Q30:

*What factors should be analyzed as nongovernmental constraints?*

## A:

- \* **Land Prices** - In looking at the price of land, estimate the average per unit cost of land, or the range of costs for developable parcels, in both single-family and multifamily zones.
- \* **Construction Costs** - The analysis of construction costs, for typical single-family and multifamily projects, should focus on the total cost to the developer, exclusive of profit, but including land, fees, material, labor, and financing.
- \* **Financing Availability** - An analysis of financing should consider whether financing is generally available in the community. This analysis could indicate whether mortgage deficient areas or underserved groups exist in the community. The financing analysis may also identify the availability of financing from private foundations (including bank foundations) corporate sponsors, community foundations, community banks, insurance companies, pension funds, and/or local housing trust funds. The analysis should consider whether the availability of financing is limited by discriminatory area lending patterns or practices.

A lack of, or limited access to, take out (new construction), rehabilitation, and/or permanent (mortgage) financing could be addressed through responsive housing finance programs such as mortgage revenue bonding, a mortgage credit certificate program, use of tax credits, first time homebuyer and down payment assistance programs, and/or targeted low-interest CDBG or HOME rehabilitation loans.

Some jurisdictions track and report housing costs and financing components periodically throughout the housing element planning period. For example, permit applicants can provide intended sales prices or rents, prices and rents of new units can be surveyed as they come into the market, and/or the rents of units developed with public assistance and subject to affordability controls can be recorded.

**see Appendix for data sources**

## **HOUSING PROGRAMS**

**Government Code Section 65583(c)**

***Q31:***

*What should an effective housing program include?*

***A:***

Responsive programs reflect the results of the local housing needs analyses, identification of available resources including land and financing, and the mitigation of identified governmental and nongovernmental constraints. Programs are the specific action steps the locality will take to implement its policies and achieve its goals and objectives. The statute requires that programs include a specific time frame for implementation and identify the agencies or officials responsible for implementation.

Effective program descriptions include the following:

- \* Immediate, short-term and long-term action steps
- \* Proposed measurable outcomes (e.g. the number of units created, completion of a fee study, development of a homeless shelter, initiation of rezoning program, preservation of at-risk units, annexation of land within the sphere of influence, etc.)
- \* Definite time frames for implementation (e.g. by June 2002, ongoing, annually during the planning period, upon adoption of a general plan amendment, etc.)
- \* Identify the agencies and officials responsible for implementation (e.g., the planning department, redevelopment agency, county community development department, city building official, housing manager, public housing authority, etc.)
- \* Demonstrate the local government's firm commitment to implement (e.g., the city and/or county will rezone x number of acres of nonresidential land to residential for development of x number of mixed use units)
- \* Identify specific funding sources, where appropriate (e.g. dollar amounts of annual funding entitlements or allocations – CDBG, HOME, ESG, HOPWA, Continuum of Care, Redevelopment Agency Low and Moderate Income Housing Funds, Bond Proceeds, Tax Credit Allocations, and other federal, State and local resources.

Examples of effective program descriptions include:

"The Department of Housing and Community Development will apply for \$500,000 in Small Cities Community Development Block Grant funds for the City's Rehabilitation Program for the 2002-2003

program year (i.e., by January, 2001) and annually thereafter. The goal is to rehabilitate up to twenty lower income owner-occupied units a year.”

“The Planning Department will revise the zoning ordinance to allow zero-lot-line and cluster developments by June 2003. This program is intended to facilitate the development of single family housing units affordable to moderate income households.

“The Planning Director will study the County’s development standards to determine which standards and policies can be relaxed to facilitate the development of lower-income housing. The review will include, but not be limited to, the County’s setback, lot coverage, design criteria, and parking requirements. The review will be completed by January 2003 with adopted recommendations implemented by June 2003.”

### *Q32:*

*What information about a redevelopment agency’s Low and Moderate Income Housing Fund (LMIHF) should be included?*

### *A:*

The housing element should estimate the amount of funds expected to accrue to the LMIHF over the planning period of the element and describe the planned uses for those funds. For each program in the housing element that lists the Redevelopment Agency as the responsible agency for implementation, the amount of redevelopment funds allocated or planned to be allocated to that program should be included.

Each redevelopment agency (Health and Safety Code Section 33334.4) is required to “expend, over the duration of the redevelopment plan, the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of low and very low income in at least the same proportion as the total number of housing units needed for those income groups.”

### *Q33:*

*How do redevelopment implementation and housing production plans relate?*

### *A:*

Many communities include redevelopment reports and plans within the housing element. Incorporating a redevelopment agency affordable housing production plan in the housing element will help promote consistency between the housing element and redevelopment plan and ensure resources can be effectively targeted to priority local housing needs. A redevelopment agency’s affordable housing production plan may be developed separately from the housing element, but it is required to be consistent with the housing element.

Redevelopment agencies are required to produce five-year implementation plans (Health and Safety Code Section 33490) and affordable housing production plans for each project area



(Health and Safety Code Section 33413(b)(4)). Production plans include project sites, inside and outside of redevelopment agency project areas, where the agency intends to expend LMIHF monies to facilitate the development of affordable housing.

**Q34:**

*What other financial resources should be included?*

**A:**

The amount of all federal, State, and local financing and subsidy programs expected to be available or programs the locality may consider applying for during the planning period should be described. Such programs include the Community Development Block Grant Funds, HOME, HOPWA, Continuum of Care, tax credit allocations, mortgage revenue, mortgage credit certificates or other bond proceeds, and any other source of funding (e.g. Rural Housing Services, HCD programs, CHFA programs, housing trust funds, private foundations, etc.).

HCD's Clearinghouse for Affordable Housing Finance website [www.hcd.ca.gov/clearinghouse/](http://www.hcd.ca.gov/clearinghouse/) contains information on over 200 financing and funding resources.

## **IDENTIFICATION OF ADEQUATE SITES**

**Government Code Section 65583(c)(1)**

**Q35:**

*When must a housing element include an adequate sites program?*

**A:**

All housing elements are required to include a program identifying adequate sites. If the land inventory contains sites with sufficient capacity, variety and infrastructure to meet the total share of regional need, the program should, at minimum identify which sites are appropriate and feasible for particular income levels. The program should demonstrate that sites will be available for residential development during the timeframe of the element.

The land inventory should demonstrate adequate site capacity to accommodate the regional housing need for all income groups. If not, actions to address the shortfall must be included under the adequate sites program.

The land inventory should also identify sufficient sites to accommodate the lower income regional housing need. If not, a program that provides sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including appropriate density and development standards to accommodate and facilitate the development housing for very low and low-income households.

## Q36:

*How is “use by right” defined?*

## A:

Use by right means the use does not require a conditional use permit, except when a mixed-use (commercial/industrial/residential) project is proposed. Use by right for all rental multifamily residential housing is to be provided in accordance with subdivision (f) of Section 65589.5.

## Q37:

*What strategies can be used to increase total residential development capacity?*

## A:

The following approaches have been used by localities to increase their total residential development capacity:

- \* Upzone existing residential areas at appropriate densities to facilitate development of affordable housing.
- \* Prezone and annex land suitable for residential use.
- \* Establish Minimum Densities – Designate minimum densities of development to assure that existing available land is not underutilized.
- \* Institute Flexible Zoning – Allow various residential uses within existing zones without requiring rezoning or conditional approvals.
- \* Allow and Encourage Mixed-Use Zoning – Permit housing in certain non-residential zones either as part of a mixed-use project or as a stand alone residential use.
- \* Rezone underutilized land from nonresidential to residential to expand the supply of available residential land.
- \* Zone for, promote and encourage infill, compact, transit-oriented, walkable, bikeable and pedestrian- friendly developments to facilitate Smart Growth strategies and reduce premature development of non-residential land.
- \* Encourage development that takes advantage of existing infrastructure with surplus capacity (e.g. recycling, compact, infill, mixed use, manufactured housing, second units).
- \* Redevelop and/or recycle underutilized existing land to more intensive uses.
- \* Convert obsolete older public/institutional/commercial/ industrial buildings to residential use through adaptive reuse and/or historic preservation.
- \* Overzone – Create a surplus of land for residential development during the current planning period of at least 20 percent more than the locality’s share of the regional housing need. Overzoning compensates for urban land left vacant due to ownership and development constraints (about 10 percent), and creates a real surplus (10 percent). A sufficient supply of land beyond the time frame of the element helps prevent land shortages from bidding up land costs.



# HOUSING PROGRAMS

- \* Allow small and irregular size lot development.
- \* Phase Additional Capital Improvements - Coincide capital improvements with the demand for new construction.
- \* Access alternative capital improvement funding mechanisms - Such as Mello-Roos community facilities bonds, the Infrastructure Bank, special assessment districts, development agreements, general or special obligation bonds, and/or the use of state and federal funds (e.g. transportation funds) to expand infrastructure capacity.
- \* Increase height limitations – Allow three stories in multifamily zones at minimum.
- \* Use innovative siting techniques – Approve Subdivision Maps that can accommodate zero-lot-lines and half-plex developments.
- \* Promote clustering of new housing to help reduce new infrastructure and housing development costs.
- \* Increase Floor Area Ratios – Allow for larger buildings on smaller lots and/or more units per lot by reducing the FAR (total lot area divided by the total building area).
- \* Establish No Net Loss Policy – Rezone equal amounts of land to replace any residential land used for other than its intended residential use.

## Q38:

*How can a locality make sufficient sites available to accommodate its share of the RHNA for all income levels, particularly lower- & moderate-income households?*

## A:

While the land inventory may identify sufficient sites in the aggregate to accommodate the locality's total numerical share of the regional housing need assessment (RHNA), it may not identify sufficient sites with appropriate zoning and infrastructure to accommodate the very low-, low- or moderate-income household portion of the share of need. In these circumstances, the element must identify sites to address the need for lower- and moderate-income households.

Localities have developed various land use controls and development incentives to encourage a variety of housing types for all income levels, including:

- \* Zone sites for higher density and more intensive residential use.
- \* Encourage and facilitate second-unit development in single-family residential areas such as to reduce development standards for second units.
- \* Zone sites for mobilehomes and mobilehome park use.
- \* Establish a rental-only zone that provides for rental apartment development in areas designated for higher density residential use.

- \* Promote multifamily rental housing above ground floor commercial uses (mixed residential-nonresidential land use). Permit apartment uses in office/commercial areas where office space revenue can offset rental costs and act as an internal project subsidy.
- \* Compile and maintain an inventory of public surplus lands and land owned by other entities, such as school districts, public utilities, etc., to identify sites suitable for development of low- and moderate-income housing. Facilitate the acquisition of surplus public lands and other identified land for affordable housing development.
- \* Zone for housing types typically occupied by renter households (e.g. second units, apartment complexes, and mixed use projects).
- \* Offer development incentives (e.g. land writedowns, fee waivers, and below market rate financing) negotiated through developer agreements to increase multifamily densities in selected areas.
- \* Reduce multifamily development standards (e.g. number of required covered parking spaces, setback and building height requirements, etc.)

## Q39:

*What are “appropriate zoning and development standards”?*

## A:

Appropriate zoning and development standards facilitate the location, siting, capacity, and price of residential development to meet identified housing needs, particularly new construction for lower income households. These include establishing maximum densities, minimum floor areas, maximum lot coverage, allowing minimum building, rear and side yard setbacks, reduced parking and amenities requirements, and other controls such as streamlined architectural and design review standards.

State zoning law (Government Code Section 65913.1) requires localities to zone sufficient vacant land for residential use with appropriate standards to meet the housing needs as identified in the general plan. Appropriate standards are requirements that “contribute significantly to the economic feasibility of producing housing at the lowest possible cost.”

In regulating subdivisions, (Government Code Section 65913.2) provides that a local government may not impose design criteria for the purpose of rendering an affordable housing development infeasible. A community may not impose standards and criteria for public improvements (e.g. streets, sewers, schools, or parks)



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that exceed those imposed on other developments in similar zones. Additionally, the effect of a community's ordinances and actions on accommodating the housing needs of the region must be considered.

## ***Q40:***

*Must a locality provide adequate sites through appropriate zoning at the beginning of the planning period?*

## ***A:***

**No.** However, a locality's ability to accommodate all units needed during the planning period is best served by designating appropriate zoning as early as possible. The most direct procedure is for the locality to undertake rezoning when the housing element is adopted. Although the program does not have to ensure the provision of sites at the beginning of the planning period, it must make provision for sites that will be available soon enough in the planning period to reasonably permit development during the planning period. The locality may also commit to subsequent zoning actions within the five-year schedule of the housing program. Subsequent zoning allows the locality to meet the site-specific rezoning provision (e.g., public notification and hearing) according to a prescribed timetable.

## ***Q41:***

*How can a community with little vacant land identify sites to accommodate its entire regional share allocation?*

## ***A:***

Communities with limited vacant land should focus their land inventory analysis on underutilized land, identify sites with the potential for recycling or rezoning and, opportunities for mixed uses (residential and commercial, for example). Identification of these sites opportunities should be accompanied by programs that encourage their development and/or reuse including programs to initiate any necessary rezoning, establish appropriate regulatory and/or financial incentives, relax development standards (design criteria, parking, building height, setback requirements, etc.), support more compact and higher density residential developments, and facilitate the new construction of multifamily rental and owner-occupied units. Examples of successful site programs for communities with limited vacant land include second units, infill, transit oriented developments, and mixed-use developments. Such developments are often located in urban cores areas, Redevelopment Project Areas, adjacent to existing neighborhoods, close to transit centers and established businesses and services. Maximizing the use of underutilized land through recycling leverages the use of existing infrastructure and can reduce overall development costs.

## Q42:

*When may sites located on a military base undergoing closure or conversion serve as an adequate site?*

## A:

The following two conditions must be met in order to qualify sites on a converting or closing military base as adequate sites:

- \* Housing units at the site will be available for occupancy by eligible households within the planning period of the element.
- \* Sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses do not qualify as an adequate site.

## Q43:

*Must a local government accommodate all of its regional share allocation by identifying adequate sites?*

## A:

**No.** Pursuant to Government Code Section 65583.1(c)(1), local governments may meet up to 25 percent of their adequate sites requirement by substituting existing units which are not now available and affordable to households with very-low and low-incomes, are condemned or uninhabitable, or will be lost from the affordable housing stock because of expiring affordability restrictions during the planning period. All such units must have long-term affordability restrictions and covenants. To use this provision of the law, the housing element must include a program to:

- \* Identify the specific source and amount of funds to be used to provide committed assistance.
- \* Dedicate the funds needed for this purpose.
- \* Describe the number of units to be provided for low- and very low-income households.
- \* Demonstrate that the amount of funds dedicated is sufficient to provide the units at affordable costs.

Only units to be substantially rehabilitated, converted from nonaffordable to affordable by acquisition of the units or the purchase of affordability covenants, or preserved at affordable housing costs by the acquisition of the units or purchase of affordability covenants are eligible.

- A. Substantially Rehabilitated:** Units to be substantially rehabilitated must result in a net increase in the stock of housing affordable to low- and very low-income households and be at imminent risk of loss to the housing stock. Relocation assistance is to be provided to any occupants temporarily or permanently displaced and the local government must require that any displaced occupant will have the right to reoccupy the rehabilitated units.

The units are to have been found by the code enforcement agency or a court to be unfit for human habitation and vacant or subject to being vacated for at least 120 days because of the existence of at least four of the conditions in Health and Safety Code Section 17995.3)

- B. Converted: Multifamily units in a rental complex of 16 or more units converted from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions.** These units are not to be acquired by eminent domain and must provide a net increase in the stock of housing affordable to low- and very low-income households.

Converted units must be made available at affordable housing costs, not occupied by low or very low-income households, and in decent, safe and sanitary condition when occupied. The acquisition price is not to be greater than 120 percent of the median price for housing units in the city or county. Long-term affordability covenants (not less than 30 years) apply to these units.

- C. Preserved:** Units are to be preserved at affordable housing costs to lower income households by acquisition of the unit or the purchase of affordability covenants for the units. Preserved units must have long-term affordability covenants and restrictions (at least 40 years), have received governmental assistance under specified programs, be expected to convert to non low-income uses, and be in decent, safe and sanitary condition. When units are identified for preservation, they must be available at affordable costs to persons and families of low- or very low-income.

**Other Requirements to Meet the Alternative Site Requirement:**

- \* Units may be substituted one for one, except for substantially rehabilitated units with affordability covenants and restrictions of less than 20 years which may be substituted at the rate of three units for one. No credit is provided for units with less than 10-year affordability restrictions.
- \* Jurisdictions are required to document the status of their committed assistance program during the housing element planning period in the annual report to the governing body. The report should identify the units for which committed assistance has been provided and indicate how each unit complies with the statutory requirements. If the jurisdiction has not entered into an enforceable agreement of committed assistance for all the units initially identified, the local government must adopt an amendment to its housing element identifying additional adequate sites sufficient to accommodate the number of units for which committed assistance was not provided. Jurisdictions which do not amend their element to include adequate sites, or which do

not complete rehabilitation, acquisition, purchase of affordability covenants, or the preservation of identified units within two years after the committed assistance was provided are prohibited from identifying substitute units in the next regular housing element update, above the number of units actually provided or preserved with committed assistance.

- \* Only those local governments (during the current or immediately prior planning period) that have met some of their share of the regional need for housing affordable to households with low and very-low incomes may use the alternative sites provision of housing element law. Documentation of having met this need includes issuance of a building permit, payment of all development and permit fees, and/or that the unit is eligible to be lawfully occupied.
- \* “Committed assistance” means a local government has entered into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make identified units affordable and that the units will be made available for occupancy within two years of the execution of the agreement. “Net increase” means only those units that were not provided committed assistance in the immediately prior planning period.

A committed assistance checklist is available on HCD’s website.

## Q44:

*What is required to identify adequate sites for emergency shelters and transitional housing?*

## A:

Every locality with an identified unmet homeless and/or transitional housing need must identify adequate sites, including existing facilities that can be converted to accommodate that need. The identified sites should be available for use as emergency shelter and transitional housing. Appropriate sites have the following characteristics:

**Location:** The site should be located within the boundaries of the jurisdiction, close to public services and facilities, including transportation, and easily accessible from areas where homeless persons congregate.

**Zoning:** Any zoning classification that allows the siting of a shelter or transitional housing project, and does not impede the development of the sites, or the conversation or use of an existing structure is appropriate. Any zoning application for emergency shelter or transitional housing should regulate the use, not the users.



Most communities include shelters and transitional housing as a permitted or conditional use in one or more zones. The General Plan designation and site zoning should accommodate the development of (or conversion of existing facilities to) emergency shelters or transitional housing without undue special regulatory approval.

**Development standards:** Parking requirements, fire regulations, and design standards should not impede the efficient use of the site as an emergency shelter or as transitional housing.

**Q45:**

*What is required to identify adequate sites for farmworker housing?*

**A:**

Sites identified for farmworker housing should facilitate the provision of housing for agricultural workers while minimizing the development of prime agricultural land to urban uses. These sites should also have characteristics relating to location, zoning and development standards which would be appropriate for their use for housing for farmworkers. Where a need for farmworker housing has been identified, the program should identify zones where housing for permanent, and where appropriate, for migrant farmworkers is allowed. Where adequate farmworker sites have not been identified, jurisdictions must allow farmworker housing “by right”.

Cities and counties are encouraged to work cooperatively to identify their respective share of sites needed for farmworker housing and to locate those sites, to the extent feasible, within or adjacent to existing urbanized areas.

## **DEVELOPMENT OF HOUSING FOR LOW- AND MODERATE-INCOME HOUSEHOLDS**

*Government Code Section 65583(c)(2)*

**Q46:**

*What is local government's role in assisting in the development of adequate housing for low- and moderate-income households?*

**A:**

Having assessed and identified the housing needs of low- and moderate-income households, localities can employ a significant number of diverse strategies to assist in developing adequate housing to meeting those needs. A combination of public and private resources is necessary to build affordable housing.

Localities can offer direct support for the development of affordable housing through various financing mechanisms including the issuance of municipal and mortgage revenue bonds and use of redevelopment powers. Direct assistance can also be provided through the utilization of appropriate federal and state financing and subsidy programs to create rental and ownership

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opportunities. Localities can create first time homebuyer, equity sharing, or self-help housing programs to provide affordable homeownership opportunities. Local governments can also assist developers in making applications for other public or private housing funds or low-income housing tax credits.

Working with local nonprofit housing developers, advocacy groups and tenants may make assisting in the development of affordable housing easier and more effective. Many jurisdictions support existing nonprofit housing developers or help establish new joint ventures and local housing sponsors. Local governments can establish a local housing authority or work with an established nonprofit development corporation or Community Based Housing Development Organization (CHDO) to develop, operate, and manage low- and moderate-income housing projects. Contacts for housing advocacy and technical assistance organizations are available through HCD with links on our website.

Local governments can indirectly facilitate the development of more affordable housing through effective administration of land use controls and by providing appropriate regulatory concessions and incentives.

The following are examples of programs that have been successfully implemented by localities to comply with State law and address their housing needs:

- \* Adopt a density bonus ordinance in compliance with Government Code Section 65915 and develop an outreach program to ensure its successful implementation.
- \* Expand on the minimum requirements of state density bonus law by offering additional density bonuses (more than 25 percent) and/or bonuses for housing meeting the special needs of the community (e.g., housing for large families).
- \* Use landbanking to make surplus lands available as sites for affordable housing.
- \* Provide fast track or one-stop permit processing for low-income housing projects.
- \* Reduce, waive or subsidize development and impact fees for affordable housing projects.
- \* Reduce or waive certain development standards to promote affordable housing development. For example, reduce parking standards or covered parking requirements for senior or certain projects designed for lower income households.
- \* Allow the purchase of air rights to increase building heights and/or intensify residential uses.



## **REMOVE OR MITIGATE GOVERNMENTAL CONSTRAINTS**

**Government Code Section 65583(c)(3)**

**Q47:**

*When must a housing element include programs to address or remove governmental constraints?*

**A:**

For each policy, requirement, or procedure identified as a governmental constraint, the element must include an appropriate program action to eliminate or modify the constraint or demonstrate how it will be offset by another policy or program.

**Q48:**

*What are examples of programs localities have used to reduce or eliminate barriers to the maintenance, improvement, and development of housing?*

**A:**

The following are strategies communities have found appropriate to remove regulatory barriers:

### Land Use Controls

- \* Modify and/or reduce growth controls to ensure accommodation of projected housing needs
- \* Exempt affordable housing projects from growth control ordinances
- \* Allow zero-lot line and cluster developments
- \* Relax development standards, for example:
  - Front yard setbacks of 20 feet or less
  - Minimum lot sizes of 6,000 square feet or less
  - Lot width of 60 feet or less
- \* Reduce parking requirements
- \* Provide flexible standards for second units to encourage their development

### Codes and Enforcement Procedures

- \* Allow use of alternative building design and construction materials and methods.
- \* Issue building permits before subdivision approval so the developer can begin construction upon permit approval.
- \* Coordinate inspection/enforcement activities for existing housing with information, technical assistance, and the availability of rehabilitation program grants/loans.
- \* Allow rehabilitation using materials and methods as of date of original construction, unless a health or safety hazard would result (Health and Safety Code Section 17922 (c)).
- \* Use State Housing Law (SHL) codes without additional local requirements. State law prohibits modification of SHL standards, except where local variations are necessary for reasons of climate, geology, or topography (Health and Safety Code Section 17958.5).

## On/Off Site Improvement Requirements

- \* Reduce street widths (e.g., 36 feet or less) and right of ways (e.g., 56 feet or less)
- \* Reduce the number and size of sidewalks (e.g., on one side of street only)
- \* Use roll curbs instead of formed curbs and gutters
- \* Increase spacing between manholes
- \* Allow multiple service laterals
- \* Allow common trenching for utilities
- \* Allow fire hydrant intervals of 500 feet or more
- \* Where appropriate, reduce the size of water and sewer mains
- \* Design residential streets to accommodate average traffic estimates
- \* Use utility or sidewalk easements instead of right-of-ways
- \* Place water supply systems and sanitary sewers in easements instead of right-of-ways

## Fees and Exactions

- \* Reduce or waive fees, exactions, and/or development standards for particular types of development (e.g., rental or assisted housing, second units, mixed-use and infill projects, housing affordable to low- and moderate-income households)
- \* Allow payment of fees upon certificate or occupancy, rather than prior to building permit issuance to reduce developer construction financing costs and overall development costs

## Processing and Permit Procedures

- \* Expedite permit processing (allow one-stop, consolidated, and concurrent permit processing)
- \* Hold pre-application development conferences
- \* Prepare and present explanatory materials on the application and review processes to streamline permit processing
- \* Utilize development agreements as authorized by Government Code Section 65864
- \* Eliminate conditional use permit requirements for multifamily projects when land is zoned multifamily

## **CONSERVE AND IMPROVE EXISTING AFFORDABLE HOUSING STOCK**

*Government Code Section 65583(c)(4)*

**Q49:**

*What strategies conserve (maintain affordability) and improve (structurally rehabilitate) the condition of the affordable housing stock?*

**A:**

The existing affordable housing stock is a valuable resource that should be conserved and, as necessary, improved. Strategies used to conserve and improve the condition of the affordable housing stock include:

### Conservation

- \* Require one-to-one replacement of any housing units demolished due to public or private action.
- \* Enact ordinances governing demolition of housing units and conversions of housing units to other uses (e.g., office or commercial). For example, Section 17980(b)(2) of the Health and Safety Code requires enforcement agencies to consider needs expressed in the housing element when deciding whether to require vacation or repair of property.
- \* Provide stable zoning to preserve affordable housing. For example, change the underlying zoning for a mobilehome park from commercial to mobilehome park.
- \* Enact occupancy ordinances requiring presale code inspections and compliance before title to a property is transferred to new owners.
- \* Maintain long-term affordability restrictions on assisted rental units (see Q50).

### Improvement

- \* Conduct annual housing condition surveys to determine the extent of rehabilitation need and to prioritize rehabilitation program actions.
- \* Enforce building and housing codes through an ongoing compliance program, financed in part with proceeds from denial of state tax benefits to owners of substandard rental housing.
- \* Establish a self-help paint-up/fix-up neighborhood improvement program.
- \* Designate lower income neighborhoods for concentrated housing rehabilitation assistance through subsidized grants and/or deferred low interest loans.
- \* Designate lower income neighborhoods for public facility/infrastructure improvements through general fund capital improvement plans, special assessments districts, Mello-Roos community facilities districts, etc.
- \* Access State and federal grant/loan owner and rental rehabilitation programs including HCD Rental Housing Programs, Community Development Block Grant, HOME, etc.

- \* Rehabilitate residential hotels and motels (SROs) for very low- and low-income households including the homeless and those at-risk of homelessness.

## **PRESERVE AT-RISK ASSISTED PROJECTS**

Government Code Section 65583(c)(6)(a)

**Q50:**

*What steps can be taken to preserve units at-risk of conversion?*

**A:**

The nature of conversion risk varies significantly among projects depending on the type of subsidy and related affordability controls. Individual program responses should be tailored to the results of the analyses and specific local situations. The following strategies are not exhaustive.

- \* Establish an Early Warning System and Monitor At-Risk Units based on at-risk units in the ten year inventory and analyses (conversion risk, costs, and resources) for possible conversions within the current and next planning period.
- \* Gauge owners intent to prepay a federally assisted mortgage.
- \* Gauge owners interest in renewal and/or opting-out of project-based Section 8 Determine whether profit-motivated owners intend to renew Section 8 contracts. Five to twenty year HUD contracts are available subject to annual appropriations.
- \* Identify qualified entities interested in participating in the Offer of Opportunity to Purchase and Right of First Refusal program (Government Code Section 65863.11).
- \* Respond to any Federal and/or State Notices including Notice of Intent to Pre-Pay (Government Code Section 65863.10), owner Plans of Action, or Opt-Out Notices filed on local projects. Local governments (affected public agencies) receive these Notices and should respond by contacting property owners.
- \* Facilitate refinancing or purchase by a qualified entity through the opportunity to submit a bonafide Offer to Purchase and Right of First Refusal process.
- \* Allocate potential sources of funds for mortgage refinancing, acquisition and rehabilitation including gap funding for nonprofit housing developers as intermediaries and for rental subsidy assistance (California Housing Finance Agency, State HCD, predevelopment funds, tax-exempt bonds, tax credits, Redevelopment Low and Moderate Income Fund, CDBG, HOME, etc.).

- \* Provide tenant relocation assistance and/or direct rental subsidies. In the event of owner mortgage prepayment or project based Section 8 opt-out, the Section 8 enhanced voucher may not be sufficient to assure affordability or the new owner may refuse to accept Section 8 vouchers. In such cases, local relocation assistance and additional rental subsidies may be necessary. Work with the local Public Housing Authority to determine the availability of tenant-based Section 8 vouchers for tenants who choose to move from at risk units or who are displaced by conversion. Some jurisdictions have used redevelopment housing funds for replacement of Section 8 rental subsidies.
- \* Provide ongoing preservation technical assistance and education to affected tenants and the community at-large, on the need to preserve the existing affordable housing stock.

**Q51:**

*What other kinds of local program actions help prevent the loss of at-risk government assisted projects?*

**A:**

- \* Prohibit condominium conversions or establish a purchase program to assist interested income eligible tenants in purchasing their units.
- \* Require owners to replace low-income units converted to market rate on a one-to-one basis.
- \* Provide local direct rental subsidies to affected tenants who wish to remain in converted units or where Section 8 vouchers and certificates are not available.
- \* Link local housing sponsors with converting projects requiring new ownership, financing and/or subsidies, and management.
- \* Provide prospective new owners with predevelopment, acquisition, rehabilitation, and/or gap grants and loans in exchange for long-term use and rent restrictions.
- \* Provide rehabilitation grants/loans with extended use restrictions for older units (e.g. locally funded with mortgage revenue bond proceeds, CDBG, or HOME).
- \* Act as an “intermediary” to temporarily preserve converted units until local housing sponsors can secure financing to repurchase and rehabilitate.
- \* Offer local incentives (lower interest rate loans and more favorable loan terms and conditions) to owners wishing to refinance and prepay their existing mortgage in exchange for continued affordability restrictions.
- \* Reduce, waive or subsidize local development fees associated with preservation or replacement of at risk units.
- \* Incorporate preservation incentives/conversion disincentives into an adopted Preservation Ordinance.

## **EQUAL HOUSING OPPORTUNITIES**

Government Code Section 65583(c)(5)

### ***Q52:***

*What can local governments do to promote equal housing opportunity?*

### ***A:***

Since State and federal laws uniformly outlaw most kinds of housing discrimination, local government's role is to identify program strategies that support and implement these laws. Such strategies may include consultation with fair housing and counseling organizations in the community to document the incidence of housing discrimination and the availability of services to address the problem. If fair housing services are not available or are inadequate, the locality can request technical assistance from HUD (<http://www.hud.gov/fheo>); the Housing Unit of the State Department of Fair Employment and Housing (<http://www.dfeh.ca.gov>), and/or local, regional, private Fair Housing organizations to help develop specific local government actions to promote fair housing opportunity. Fair Housing laws make it illegal to discriminate against any person because of race, color, religion, sex, disability, familial status, national origin, ancestry, marital status, sexual orientation, source of income and age in the rental or sale, financing, advertising, appraisal, provision of real estate brokerage services, etc., and land use practices.

In the housing element, a local equal housing opportunity program should provide a means for the resolution of local housing discrimination complaints and should be promoted throughout the community. The local program may involve the dissemination of information on fair housing laws, and provide for referrals to appropriate investigative or enforcement agencies. Where appropriate, communities should distribute fair housing information in languages other than English. Sites for display of fair housing information include buses, in public libraries, community and senior centers, local social service offices, and other public locations including Civic Centers or County administrative offices.

In larger and/or urban jurisdictions, more direct program actions would be appropriate such as a commitment to use CDBG funds to support fair housing information and referral and counseling services. The locality may wish to contract with or create a fair housing council to investigate and resolve discrimination complaints, and advocate specific equal housing opportunity actions before community and business organizations.

A Consolidated Plan requires annual certifications that the jurisdiction will affirmatively further fair housing, conduct an analysis to identify impediments to fair housing choice, and take actions to overcome the effects of any impediments identified.



Many jurisdictions cross-reference and/or incorporate fair housing information and data from the consolidated plan into their housing element (see Appendix for additional resources).

The following are examples of successful policies, plans, and practices to identify barriers and promote fair housing:

- \* Use CDBG funds to fund fair housing enforcement, education, and technical assistance activities
- \* Ensure that all new, multifamily construction meets the accessibility requirements of the federal and State fair housing acts through local permitting and approval processes
- \* Use banks that conduct an effective Community Reinvestment program
- \* Revise zoning and land use policies that have an unintended negative impact on the ability of families with children, low-income families, and renters with disabilities from having a choice of housing options

All units of government are required to comply with the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in employment, public and commercial facilities, delivery of services, zoning and land use.

## Q53:

*Does State law address equal housing opportunities in relationship to housing development and zoning?*

## A:

**Yes.** Government Code Section 12955 et.seq. (The Fair Employment and Housing Act) prohibits all housing providers, including local governments, from discriminating in housing development and all actions related to the provision of housing based on race, color, national origin, ancestry, sex, sexual orientation, religion, mental and physical disability, marital status, familial status, source of income and age.

Additionally, Government Code Section 12955 subdivision (I), specifically prohibits discrimination through public or private land use practices, decisions and authorizations. Discrimination in this regard includes, but is not limited, to restrictive covenants, zoning laws, denials of use permits and other actions authorized under the Planning and Zoning Law (Title 7, commencing with Section 65000), that make housing opportunities unavailable. Government Code Section 12955.8 prohibits land use policies and practices that have a disproportionate impact on persons protected by the fair housing laws unless they are necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and there is not less restrictive means to achieve the purpose.

To be in violation of fair housing law, discrimination may be intentional or unintentional. Intentional discrimination is established by showing that one or more of the protected bases is a motivating factoring committing a discriminatory housing



practice even though other factors may have also motivated the practice. Unintentional discrimination typically entails a facially neutral practice (e.g., a numerical occupancy standard), which has a discriminatory effect or impact on a protected group.

Government Code Section 65008 prohibits localities from denying the enjoyment of residence, land ownership, tenancy, or any other land use because of religious beliefs or ethnic origins. It also prohibits localities from preventing or discriminating against any residential development or emergency shelter because of the method of financing or the race, sex, color, religion, national origin, ancestry, lawful occupation, or age of the owners or intended occupants.

Local governments are required under State and federal law to “reasonably accommodate” housing for persons with disabilities when exercising its planning and zoning powers. Jurisdictions must grant variances and zoning changes if necessary to make proposed housing for persons with disabilities feasible, but are not required to fundamentally alter their zoning scheme.

In addition, localities are prohibited from enacting or administering ordinances, which discriminate against a residential development or emergency shelter because the development or shelter is intended for use by low- and moderate-income households.

Finally, local governments may not impose different requirements on a government assisted residential development or emergency shelter than those imposed on non-assisted developments (see Appendix for planning, zoning, fair housing, and other related laws).

## **ENERGY CONSERVATION OPPORTUNITIES**

*Government Code Section 65583(a)(7)*

**Q54:**

*What constitutes an adequate analysis of energy conservation opportunities?*

**A:**

The purpose of this analysis is to ensure the locality has considered how energy conservation can be achieved in residential development and how energy conservation requirements may contribute to reducing overall development costs and therefore, the supply and affordability of units.

The following are examples of policies, plans, and development standards that have been successful in reducing local energy costs or consumption:

- \* Promote higher density and “Smart Growth” developments.

# HOUSING PROGRAMS



## State Department of Housing and Community Development

- \* Adopt an Energy Conservation Ordinance to establish programs that encourage conservation of nonrenewable energy resources.
- \* Enforce State Energy Efficiency Standards for Residential and nonresidential Buildings (Government Code Title 24, Part 6).
- \* Provide incentives to encourage green (energy-efficient and environmentally-sensitive) building techniques and materials in new and resale homes and apartments.
- \* Support the elimination of contamination in older buildings (lead based paint, asbestos, etc.) during rehabilitation and code inspections.
- \* Promote energy audits and resident participation in utility rebate programs through private and public utility companies.
- \* Encourage low-income homeowners or renters to apply for free energy audits and home weatherization through the federal DOE's Weatherization Assistance Program in partnership with State and local programs (usually conducted by community action agencies or other nonprofit organizations). Weatherization and insulation services reduce the heating and cooling costs for low-income families.
- \* Use emerging technologies to reduce high demands for electricity and natural gas including use of passive solar devices and where feasible other renewable energy technologies (e.g., biomass, wind and geothermal).
- \* Develop energy conserving standards for street widths and landscaping of streets and parking lots to reduce heat loss and/or provide shade.
- \* Require energy efficient retrofits prior to resale of homes.
- \* Promote efficient building design to orient buildings to the sun rather than the street or site.
- \* Encourage the use of location-efficient mortgage funds available from Fannie Mae.
- \* Promote the construction of tighter building envelopes with maximum height and sky exposure planes and minimum setbacks.
- \* Promote the use of passive solar devices as an alternative to the use of electricity or natural gas and where feasible other renewable energy technologies (e.g. biomass, wind and geothermal).

# HOUSING PROGRAMS



## State Department of Housing and Community Development

The California Department of Community Services and Development ([www.csd.ca.gov](http://www.csd.ca.gov)), in partnership with the network of local community services agencies that assist low-income households, administers the Low Income Home Energy Assistance Program (LIHEAP) that provides financial assistance to low-income persons to offset the costs of heating and/or cooling dwellings and the Energy Low-Income Weatherization Assistance Program (DOE-LIWAP) that provides installation and weatherization measures that increase the energy efficiency of dwellings occupied by low-income persons.

Additional information is available from the federal Environmental Protection Agency (EPA), Department of Energy (DOE), and HUD's Partnership for Advancing Technology in Housing (PATH); California Environmental Protection Agency (Cal-EPA) and the California Energy Commission.

The EPA website is <http://www.epa.gov/region9/>.

The Department of Energy's (DOE) website is <http://www.doe.gov>.

The PATH website is <http://www.pathnet.org/>

PATH promotes the creation and use of technology to improve the quality, durability, environmental performance, energy efficiency, and affordability of American homes. Led by HUD, this public/private initiative combines resources from both the Government and the housing industry to speed innovation throughout the homebuilding industry.

Cal-EPA's website is <http://calepa.ca.gov> and the State Energy Commission's websites include:

<http://www.energy.ca.gov>

[energja@energy.ca.gov](mailto:energja@energy.ca.gov), and

<http://www.energy.ca.gov/consumer/home/index.html>.

## QUANTIFIED OBJECTIVES

Government Code Section 65583(b)

### ***Q55:***

*What is meant by maximum objectives for units to be constructed, rehabilitated, and conserved by income group?*

### ***A:***

The construction objective refers to the number of new units that potentially may be constructed over the planning period of the element given the locality's land resources, constraints which cannot be mitigated or removed, and proposed programs.

The rehabilitation objective is the number of existing units expected to be rehabilitated during the planning period of the element.

The conservation objective refers to the preservation of the existing affordable housing stock throughout the planning period. To determine the number of units to be conserved, a locality could, for example, quantify the number of existing housing units that will be preserved through the provision of more stable zoning for mobilehome parks or other affordable housing types. A housing element could also provide objectives for local participation in the Section 8 tenant-based certificate/voucher program, which preserves the affordability of rental units.

A subset of the conservation objective is the number of federally, state, and locally assisted "at-risk" units to be preserved.

Each quantified objective should be described by income level as illustrated in the following table:

| Income Category | New Construction | Rehabilitation | Conservation |
|-----------------|------------------|----------------|--------------|
| Very Low-Income |                  |                |              |
| Low-Income      |                  |                |              |
| Moderate-Income |                  |                |              |
| Above Moderate  |                  |                |              |

### ***Q56:***

*How should a locality establish its maximum objectives?*

### ***A:***

The setting of maximum objectives follows a locality's work in identifying its housing needs, surveying its land and financial resources, analyzing constraints, and developing appropriate programmatic and policy responses which reflect a community's unique needs and circumstances. This information is used to establish reasonable estimates of the maximum number of units, by income level, these programs and policies can accomplish.

Ideally, objectives will be equal to identified needs. However, when a locality has determined total housing needs exceed available resources, the quantified objectives may be less than the total identified need. Under these circumstances, the element should describe the analysis used to establish the maximum objectives.

Some localities also establish quantified objectives by tenure and/or by type of household to be benefited.

**Q57:**

*Given limited resources, how can a locality establish maximum objectives?*

**A:**

For some communities, total housing needs may exceed the locality's ability to meet those needs with existing resources. In such cases, communities target limited resources to areas of the greatest local need.

Emphasizing a particular objective however may result in reducing another. For example, in urban areas with a shortage of land, programs to maximize housing preservation may be the priority, even though this may limit opportunities for the development of new housing.

In growing communities, the development of housing affordable for future residents may be a greater need than housing rehabilitation. Such a community may use Community Development Block Grant or HOME funds for land writedowns to facilitate new construction rather than for rehabilitation loans.

## **MAINTAIN CONSISTENCY WITH GENERAL PLAN**

*Government Code Section 65583(c)*

**Q58:**

*How should consistency among elements of the general plan be achieved?*

**A:**

The housing element affects a locality's policies for growth and residential land uses. Among other things, the housing element establishes the locality's housing goals, policies and objectives, identifies sites for new construction, and addresses governmental constraints. The goals, policies, and objectives of an updated housing element may conflict with those of the land-use, circulation, open space elements, zoning, and/or redevelopment, capital improvement plans, especially if these plans or elements have not been updated recently.

The general plan is required to be "internally consistent". Conflicts between general plan elements should be acknowledged and resolved. A general plan must be amended to eliminate conflicts between elements. When conflicts exist, the housing element must describe how consistency will be achieved and how the goals of the housing element will be addressed. California law also requires consistency between a general plan and implementation measures such as the zoning ordinance except for charter cities.

Many communities attempt to address and resolve conflicts by amending the zoning ordinance and all relevant elements of the general plan concurrent with amendment of the housing element. For example, if densities of particular sites must be increased to identify adequate sites, the attendant amendments to the general plan and the zoning ordinance could be proposed and adopted at the same public hearing as the housing element.

At the time of any amendment to the housing element or other general plan elements, the jurisdiction should review the entire general plan, especially land-use provisions, to ensure internal consistency is maintained.

A broader discussion of general plan consistency requirements is found in the *Governor's Office of Planning and Research General Plan Guidelines*.

## **ANNUAL REPORT TO THE LEGISLATURE**

*Government Code Section 65400(b)(1)*

**Q59:**

*How does the annual reporting requirement relate to the housing element?*

**A:**

The annual report to the legislative body provides information on the status of general plan and implementation efforts, including progress in meeting the share of the regional housing need and efforts to remove governmental constraints to the maintenance, improvement, and development of housing. Annual reports of local governments to their legislative bodies document progress in meeting identified housing goals and objectives, facilitate housing element revisions and updates, assist in local reviews of the previous housing elements, and can serve as a tool to encourage effective public participation. Annual reports are to be submitted to the Governor's Office of Planning and Research and HCD by July 1.

Annual reports can also serve as an effective tool in monitoring progress in implementing programs and policies. Should the annual reports document significant delays or constraints to program implementation, the local government could modify program actions to improve implementation.

## **REQUIREMENTS FOR COASTAL ZONE JURISDICTIONS**

*Government Code Section 65588(d)(1-4)*

**Q60:**

*What do the requirements for coastal zones include?*

**A:**

- \* The number of new housing units approved for construction within the coastal zone (after January 1982).
- \* The number of housing units for persons and families of low- and moderate-income (*Health and Safety Code Section 50093*) required to be provided in new housing developments either within the coastal zone or within three miles of it.
- \* The number of existing residential dwelling units occupied by low- and moderate-income households required either within the coastal zone or within three miles of the coastal zone that have been authorized to be demolished or converted (after January 1982).

The number of residential dwelling units for low- and moderate-income persons and families that have been required for replacement (of those units being demolished or converted) in the



coastal zone or within three miles of the coastal zone. Designate the location of replacement units in the housing element review for coastal zones.

This data on new construction, demolished/converted, and replacement housing units for low and moderate income households helps the locality determine whether the affordable housing stock in the coastal zone is being protected and provided as required by Section 65590.

It is also appropriate for the housing element to include incentives and regulatory concessions in order to increase the feasibility of providing low- and moderate-income housing within the coastal zones.

## **NOTIFICATION TO RETAIL WATER AND SEWER PROVIDERS**

Government Code Section 65589.7

**Q61:**

*What is a local government's obligation regarding notification to water and sewer providers?*

**A:**

Upon completion of an amended or adopted housing element, a local government is responsible for distributing a copy of the element to area water and sewer providers. The purpose of this section of the law is to ensure that public and/or private water and wastewater providers provide a priority to proposed housing development projects for lower income households in their current and future resource or service allocations.

Local public and/or private water and sewer providers must grant a priority for service hook-ups to developments that help meet the community's share of the regional need for lower income housing. This law is useful in areas with limited available sewer or water hook-ups.

Water and sewer districts may need to put written policies for allocating preferences in place in order to comply with the law. To facilitate and expedite the notification process, localities should communicate the affordable housing needs identified in their housing elements directly to applicable districts. For example, when distributing the housing element to special districts, local governments should include a cover letter citing Government Code Section 65589.7 describe the regional housing needs, and identify the sites in the land inventory that are appropriate for the development of housing for lower income households and therefore require priority.

"Water services at retail" means supplying water directly to the end user or consumer of that water, and does not include sale by a water supplier to another water supplier for resale.

**Housing Element Questions and Answers Statutory Code Sections  
Government Code Sections  
Health and Safety Code Sections**

**Government Code Sections:**

12955  
12955.8  
65008  
65400.  
65457  
65580-65589.8  
65864

**Health and Safety Code Sections:**

17922  
17958.5  
17980  
17995.3  
33334.4  
33413  
33490  
50079.5  
50093  
50105

**Government Code Sections:**

**12955.** It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability of that person.

(b) For the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability of any person seeking to purchase, rent or lease any housing accommodation.

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability or an intention to make any such preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, sexual orientation, color, race, religion, ancestry, national origin, familial

status, marital status, disability, source of income, or on any other basis prohibited by that section.

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, marital status, ancestry, disability, source of income, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, source of income, familial status, or disability.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, sexual orientation, marital status, ancestry, disability, familial status, source of income, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, sexual orientation, familial status, source of income, disability, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void. This paragraph shall become operative on January 1, 2001.

(m) As used in this section, "race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p) (1) For the purposes of this section, "source of income" means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant.

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

(q) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

**12955.** It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability of that person.

(b) For the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability of any person seeking to purchase, rent or lease any housing accommodation.

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability or an intention to make any such preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, or on any other basis prohibited by that section.

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or

has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, marital status, ancestry, disability, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, sexual orientation, marital status, ancestry, disability, familial status, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, sexual orientation, familial status, disability, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void. This paragraph shall become operative on January 1, 2001.

(m) As used in this section, "race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) This section shall become operative on January 1, 2005.

**12955.8.** For purposes of this article, in connection with unlawful practices:

(a) Proof of an intentional violation of this article includes, but is not limited to, an act or failure to act that is otherwise covered by this part, that demonstrates an intent to discriminate in any manner in violation of this part. A person intends to discriminate if race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, or ancestry is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence.

(b) Proof of a violation causing a discriminatory effect is shown if an act or failure to act that is otherwise covered by this part, and that has the effect, regardless of intent, of unlawfully discriminating on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, or ancestry. A business

establishment whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the business establishment can establish that the action or inaction is necessary to the operation of the business and effectively carries out the significant business need it is alleged to serve. In cases that do not involve a business establishment, the person whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the person can establish that the action or inaction is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve.

(1) Any determination of a violation pursuant to this subdivision shall consider whether or not there are feasible alternatives that would equally well or better accomplish the purpose advanced with a less discriminatory effect.

(2) For purposes of this subdivision, the term "business establishment" shall have the same meaning as in Section 51 of the Civil Code.

**65008.** (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the individual or group of individuals. For purposes of this section, both of the following definitions apply:

(A) "Familial status" as defined in Section 12955.2.

(B) "Disability" as defined in Section 12955.3.

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter because of the method of financing or the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the owners or intended occupants of the residential development or emergency shelter.

(c) (1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against a residential development or emergency shelter because the development or shelter is intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income.

(2) For the purposes of this section, "persons and families of middle income" means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is



subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e).

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e) Notwithstanding subdivisions (a) to (d), inclusive, nothing in this section or this title shall be construed to prohibit either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995.

(2) Any city, county, or city and county from extending preferential treatment to residential developments or emergency shelters assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, or other residential developments or emergency shelters intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families. This preferential treatment may include, but need not be limited to, reduction or waiver of fees or changes in architectural requirements, site development and property line requirements, building setback requirements, or vehicle parking requirements that reduce development costs of these developments.

(f) "Residential development," as used in this section, means a single-family residence or a multifamily residence, including manufactured homes, as defined in Section 18007 of the Health and Safety Code.

(g) This section shall apply to chartered cities.

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

**65400.** After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) (1) Provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the plan and progress in its implementation, including the progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(2) The housing portion of the annual report required to be provided to the Office of Planning and Research and the Department of Housing and Community Development pursuant to this subdivision shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of, Chapter 4 (commencing with Section 11370) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2). This report shall be provided to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on or before October 1 of each year.

**65457.** (a) Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. However, if after adoption of the specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption provided by this subdivision does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code. After a supplemental environmental impact report is certified, the exemption specified in this subdivision applies to projects undertaken pursuant to the specific plan.

(b) An action or proceeding alleging that a public agency has approved a project pursuant to a specific plan without having previously certified a supplemental environmental impact report for the specific plan, where required by subdivision (a), shall be commenced within 30 days of the public agency's decision to carry out or approve the project.

(c) This section does not supersede but provides an alternative procedure to Section 21080.7 of the Public Resources Code.

**65580.** The Legislature finds and declares as follows:

(a) The availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.

(b) The early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels.

(c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.

(d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.

(e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.

**65581.** It is the intent of the Legislature in enacting this article:

(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.

(b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.

(c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.

(d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.

**65582.** As used in this article:

(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.

(b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.

(c) "Department" means the Department of Housing and Community Development.

(d) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

(e) "Low- and moderate-income households" means persons and families of low or moderate incomes as defined by Section 50093 of the Health and Safety Code.

**65583.** The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with

disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) An analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify

the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) (A) Identify adequate sites which will be made available through appropriate zoning and development standards and with services and facilities, including sewage collection and treatment, domestic water supply, and septic tanks and wells, needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b).

(i) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

(ii) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(B) For purposes of this paragraph, the phrase "use by right" shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a).

The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

**65583.1.** (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for compliance with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for second units based on the number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the



resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 if the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants

temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, except that if the period is less than 20 years, only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of 16 or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at a cost affordable to low- or very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.

(vi) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 30 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National Housing

Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) On July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies

with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

**65584.** (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county.

The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties that already have disproportionately high proportions of lower income households. Based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and in consultation with each council of governments, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council

of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The councils of governments shall provide each city and county with the department's information. The council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity if this responsibility is requested by a county and all cities in the county, a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or the governing body of a subregional agency established by the council of governments, in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process, timing, and other terms and conditions of that delegation of responsibility.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). If the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available

data, accepted planning methodology, and local geological and topographical restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grants a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount that will make up for the reduction.

(B) The transfer of shares shall only occur between a county and cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a).

(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d) (1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city or county that directly limits, by number, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(2) Paragraph (1) does not apply to any city or county that imposes a moratorium on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings that specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.



(f) A fee may be charged to interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to 7 days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

**65584.3.** (a) A city that is incorporated to promote commerce and industry, that is located in the County of Los Angeles, and that has no residentially zoned land within its boundaries on January 1, 1992, may elect to adopt a housing element that makes no provision for new housing or the share of regional housing needs as determined pursuant to Section 65584 for the current and subsequent revisions of the housing element pursuant to Section 65588, for the period of time that 20 percent of all tax increment revenue accruing from all redevelopment projects, and required to be set aside for low- and moderate-income housing pursuant to Section 33334.2 of the Health and Safety Code, is annually transferred to the Housing Authority of the County of Los Angeles.

(b) (1) The amount of tax increment to be transferred each year pursuant to subdivision (a) shall be determined at the end of each fiscal year, commencing with the 1992-93 fiscal year. This amount shall be transferred within 30 days of the agency receiving each installment of its allocation of tax increment moneys, commencing in 1993.

(2) On or before December 31, 1992, the agency shall make an additional payment to the Housing Authority of the County of Los Angeles that eliminates any indebtedness to the low- and moderate-income housing fund pursuant to Section 33334.3. This amount shall be reduced by any amount actually expended by the redevelopment agency for principal or interest payments on agency bonds issued prior to the effective date of the act that adds this section, when that portion of the agency's tax increment revenue representing the low- and moderate-income housing set-aside funds was lawfully pledged as security for the bonds, and only to the extent that other tax increment revenue in excess of the 20-percent low- and moderate-income set-aside funds is insufficient in that fiscal year to meet in full the principal and interest payments.

(c) The Department of Housing and Community Development shall annually review the calculation and determination of the amount transferred pursuant to subdivisions (a) and (b). The department may conduct an audit of these funds if and when the Director of Housing and Community Development deems an audit appropriate.

(d) The amount transferred pursuant to subdivisions (a) and (b) shall fulfill the obligation of that city's redevelopment agency to provide for housing for low- and moderate-income families and individuals pursuant to Sections 33334.2 to 33334.16, inclusive, of the Health and Safety Code. The use of these funds for low- and moderate-income families in the region of the Southern California Association of Governments within which the city is located shall be deemed to be of benefit to the city's redevelopment project areas.

(e) (1) The amount transferred pursuant to subdivisions (a) and (b) to the Housing Authority of the County of Los Angeles shall be expended to provide housing and assistance, including, but not limited to, that specified in subdivision (e) of Section

33334.2 of the Health and Safety Code for low-and moderate-income families and individuals, in the region of the Southern California Association of Governments within which the city is located.

(2) Funds expended pursuant to this subdivision shall be expended in accordance with all of the following:

(A) The funds shall be expended for the construction of low- and moderate-income housing located no further than 15 miles from the nearest boundary line of the City of Industry.

(B) The low- and moderate-income housing constructed pursuant to this subdivision shall be in addition to any other housing required by the housing element of the general plan of the jurisdiction in which the low- and moderate-income housing is constructed.

(C) Funds may be encumbered by the Housing Authority of the County of Los Angeles for the purposes of this subdivision only after the authority has prepared a written plan for the expenditure of funds to be transferred to the authority pursuant to this subdivision and has filed a copy of this expenditure plan with the Department of Housing and Community Development.

(f) A city that meets the conditions specified in subdivision (d) shall continue to have responsibility for preparing a housing element pursuant to Section 65583 only to the extent to which the assessment of housing needs, statement of goals and objectives, and the five-year schedule of actions relate to the city's plan to maintain, preserve, and improve the housing that exists in the city on the effective date of the act which adds this section.

(g) This section shall not become operative unless and until a parcel of land, to be dedicated for the construction of a high school, is transferred pursuant to a written agreement between the City of Industry and the Pomona Unified School District, and a copy of this agreement is filed with the County Clerk of the County of Los Angeles.

**65584.5.** (a) A city or county may transfer a percentage of its share of the regional housing needs to another city or county, if all of the following requirements are met:

(1) Both the receiving city or county and the transferring city or county comply with all of the conditions specified in subdivision (b).

(2) The council of governments or the department reviews the findings made pursuant to paragraph (2) of subdivision (c).

(3) The transfer does not occur more than once in a five-year housing element interval pursuant to subdivision (b) of Section 65588.

(4) The procedures specified in subdivision (c) are met.

(b) (1) Except as provided in paragraph (5) of subdivision (c) of Section 65584, a city or county transferring a share of its regional housing needs shall first have met, in the current or previous housing element cycle, at least 15 percent of its existing share of the region's affordable housing needs, as defined in Section 65584, in the very low and lower income category of income groups defined in Section 50052.5 of the Health and Safety Code if it proposes to transfer not more than 15 percent. In no event, however, shall the city or county transfer more than 500 dwelling units in a housing element cycle.

(2) A city or county shall transfer its regional housing needs in the same proportion by income group as the jurisdiction has met its regional housing needs.

(3) The transfer shall be only between jurisdictions that are contiguously situated or between a receiving city or county that is within 10 miles of the territory of the community of the donor city or county. If both the donor community and receiving community are counties, the donor county shall be adjacent to, in the same council of governments region as, and in the same housing market as, the receiving county. The sites on which any transferred housing units will be constructed shall be in the receiving city or county, and within the same housing market area as the jurisdiction of the donor city or county.

(4) The transferring and receiving city or county shall have adopted, and shall be implementing, a housing element in substantial compliance with Section 65583.

(5) The transferring city or county and the receiving city or county shall have completed, and provided to the department, the annual report required by subdivision (b) of Section 65400.

(c) (1) The donor city or county and the receiving city or county shall, at least 45 days prior to the transfer, hold a public hearing, after providing notice pursuant to Section 6062, to solicit public comments on the draft contract, including its terms, conditions, and determinations.

(2) The transferring and the receiving city or county shall do all of the following:

(A) Adopt a finding, based on substantial evidence on the record, that the transfer of the regional housing need pursuant to the terms of the agreement will not cause or exacerbate racial, ethnic, or economic segregation and will not create a detrimental financial impact upon the receiving city or county.

(B) Adopt a finding, based on substantial evidence on the record, that the transfer of the regional housing need will result in the construction of a greater number of similar type dwelling units than if the transfer does not occur.

(3) (A) The transferring city or county and the receiving city or county shall enter into an agreement to transfer units eligible under subdivision (b). A copy of this agreement shall be sent to the council of governments and the department to be kept on file for public examination.

(B) The agreement shall include a plan and schedule for timely construction of dwelling units, including, in addition to site identification, identification of and timeframes for applying for sufficient subsidy or mortgage financing if the units need a subsidy or mortgage financing, and a finding that sufficient services and public facilities will be provided.

(4) At least 60 days prior to the transfer, the receiving city or county planning agency and the transferring city or county planning agency shall submit to the department a draft amendment to reflect the identified transferred units. A transferring agency may reduce its housing needs only to the extent that it had not previously reduced its housing needs pursuant to paragraph (2) of subdivision (b) of Section 65583. A county planning agency that has its share of the regional housing need reduced pursuant to paragraph (5) of subdivision (c) of Section 65584 shall comply with this section. A receiving city or county shall, in addition to any other provisions of the article, identify in its housing element sufficient sites to meet its initial low- and moderate-income housing needs and sufficient sites to meet all transferred housing needs.

(5) The department shall review the draft amendment and report its written findings to the planning agency within 45 days of its receipt.

(6) The department's review shall follow the same procedure, requirements, and responsibilities of Sections 65583, 65585, 65587, and 65589.3. The court shall consider any written findings submitted by the department.

(d) No transfer made pursuant to this section shall affect the plans for a development that have been submitted to a city or county for approval 45 days prior to the adoption of the amendment to the housing element.

(e) No transfer made pursuant to this section shall be counted toward any ordinance or policy of a locality that specifically limits the number of units that may be constructed.

(f) The Attorney General or any other interested person shall have authority to enforce the terms of the agreement and the provisions of this section.

(g) For a period of five years after the transfer occurs, the report required by subdivision (b) of Section 65400 shall include information on the status of transferred units, implementation of the terms and conditions of the transfer contract, and information on any dwelling units actually constructed, including the number, type, location, and affordability requirements in place for these units.

(h) (1) At least 60 days prior to the proposed transfer, the donor city or county shall submit the proposed agreement to the council of governments, or to the department if there is no council of governments that serves the city or county, for review. The governing board of the council or the director shall determine whether there is substantial evidence to support the terms, conditions, and determinations of the agreement and whether the agreement complies with the substantive and procedural requirements of this section. If the council or the director finds that there is substantial evidence to support the terms, conditions, and determinations of the agreement, and that the agreement complies with the substantive and procedural requirements of this section, the participating jurisdictions may proceed with the agreement. If the governing board or the director finds that there is not substantial evidence to support the terms, conditions, and findings of the agreement, or that the agreement does not comply with the substantive and procedural requirements of this section, the board or the director may make recommendations for revising or terminating the agreement. The participating jurisdictions shall then include those revisions, if any, or terminate the agreement.

(2) The council or the director may convene a committee to advise the council or the director in conducting this review. The donor city or county and the receiving community shall pay the council's or the department's costs associated with the committee. Neither the donor city or county, nor the receiving city or county, may expend moneys in its Low and Moderate Income Housing Fund of its redevelopment agency for costs associated with the committee.

(3) Membership of the committee appointed pursuant to paragraph (2) shall include all of the following:

(A) One representative appointed by the director.

(B) One representative appointed by the donor agency.

(C) One representative appointed by the receiving community.

(D) Two low- and moderate-income housing advocates, appointed by the director, who represent those persons in that region.

(i) (1) The receiving city or county shall construct the housing units within three years of the date that the transfer contract is entered into pursuant to this section. This

requirement shall be met by documenting that a building permit has been issued and all fees have been paid.

(2) Any portion of a regional share allocation that is transferred to another jurisdiction, and that is not constructed within the three-year deadline set forth in paragraph (1), shall be reallocated by the council of governments to the transferring city or county, and the transferring city or county shall modify its zoning ordinance, if necessary, and amend its housing element to reflect the reallocated units.

(3) If, at the end of the five-year housing element planning period, any portion of a regional share allocation that is transferred to another jurisdiction is not yet constructed, the council of governments shall add the unbuilt units to the normal regional fair share allocation and reallocate that amount to either of the following:

(A) The receiving city, if the three-year deadline for construction has not yet occurred; or

(B) The transferring city, if the three-year deadline for construction has occurred.

(4) If the transferred units are not constructed within three years, the nonperforming jurisdictions participating in the transfer of regional share allocations shall be precluded from transferring their regional shares, pursuant to this section, for the planning period of the next periodic update of the housing element.

(j) On or after January 1, 2000, no transferring city or county shall enter into an agreement pursuant to this section unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

(k) If Article XXXIV of the California Constitution is applicable, the receiving city or county shall certify that it has sufficient authority under Article XXXIV of the California Constitution to allow development of units transferred pursuant to this section.

(l) The receiving city or county shall not, within three years of the date of the transfer agreement entered into pursuant to this section, or until transferred units are constructed, whichever is longer, enter into a contract to transfer units outside the territorial jurisdiction of the agency pursuant to this section.

(m) Communities that have transferred a portion of their share of the regional housing need to another city or county pursuant to this section shall comply with all other provisions of law for purposes of meeting the remaining regional housing need not transferred, including compliance with the provisions of Section 65589.5.

(n) As used in this section, "housing market area" means the area determined by a council of governments or the department pursuant to Section 65584, and based upon market demand for housing, employment opportunities, the availability of suitable sites and public facilities, and commuting patterns.

(o) This section shall not be construed to interfere with the right of counties to transfer shares of regional housing needs pursuant to paragraph (5) of subdivision (c) of Section 65584.

**65584.6.** (a) The County of Napa may, during its current housing element planning period, identified in Section 65588, meet up to 15 percent of its existing share of the regional housing need for lower income households, as defined in Section 65584, by committing funds for the purpose of constructing affordable housing units, and constructing those units in one or more cities within the county, only after all of the following conditions are met:

(1) An agreement has been executed between the county and the receiving city or cities, following a public hearing held by the county and the receiving city or cities to solicit public comments on the draft agreement. The agreement shall contain information sufficient to demonstrate that the county and city or cities have complied with the requirements of this section and shall also include the following:

(A) A plan and schedule for timely construction of dwelling units.

(B) Site identification by street address for the units to be developed.

(C) A statement either that the sites upon which the units will be developed were identified in the receiving city's housing element as potential sites for the development of housing for lower-income households, or that the units will be developed on previously unidentified sites.

(D) The number and percentage of the county's lower-income housing needs previously transferred, for the appropriate planning period, pursuant to this section.

(2) The council of governments that assigned the county's share receives and approves each proposed agreement to meet a portion of the county's fair share housing allocation within one or more of the cities within the county after taking into consideration the criteria of subdivision (a) of Section 65584. If the council of governments fails to take action to approve or disapprove an agreement between the county and the receiving city or cities within 45 days following the receipt of the agreement, the agreement shall be deemed approved.

(3) The city or cities in which the units are developed agree not to count the units towards their share of the region's affordable housing need.

(4) The county and the receiving city or cities, based on substantial evidence on the record, make the following findings:

(A) Adequate sites with appropriate zoning exist in the receiving city or cities to accommodate the units to be developed pursuant to this section. The agreement shall demonstrate that the city or cities have identified sufficient vacant or underutilized or vacant and underutilized sites in their housing elements to meet their existing share of regional housing need, as allocated by the council of governments pursuant to subdivision (a) of Section 65584, in addition to the sites needed to construct the units pursuant to this section.

(B) If needed, additional subsidy or financing for the construction of the units is available.

(C) The receiving city or cities have housing elements that have been found by the Department of Housing and Community Development to be in compliance with this article.

(5) If the sites upon which units are to be developed pursuant to this section were previously identified in the receiving city's housing element as potential sites for the development of housing sufficient to accommodate the receiving city's share of the lower income household need identified in its housing element, then the receiving city shall have amended its housing element to identify replacement sites by street address for housing for lower-income households. Additionally, the Department of Housing and Community Development shall have received and reviewed the amendment and found that the city's housing element continues to comply with this article.

(6) The county and receiving city or cities shall have completed, and provided to the department, the annual report required by subdivision (b) of Section 65400.



(7) For a period of five years after a transfer occurs, the report required by subdivision (b) of Section 65400 shall include information on the status of transferred units, implementation of the terms and conditions of the transfer agreement, and information on any dwelling units actually constructed, including the number, type, location, and affordability requirements.

(8) The receiving city demonstrates that it has met, in the current or previous housing element cycle, at least 20 percent of its share of the regional need for housing for very low-income households allocated to the city pursuant to Section 65584.

(b) The credit that the county receives pursuant to this section shall not exceed 40 percent of the number of units that are affordable to lower income households and constructed and occupied during the same housing element cycle in unincorporated areas of the county. The county shall only receive the credit after the units have been constructed and occupied. Within 60 days of issuance of a certificate of occupancy for the units, the county shall inform the council of governments and the department in writing that a certificate of occupancy has been issued.

(c) Concurrent with the review by the council of governments prescribed by this section, the Department of Housing and Community Development shall evaluate the agreement to determine whether the city or cities are in substantial compliance with this section. The department shall report the results of its evaluation to the county and city or cities for inclusion in their record of compliance with this section.

(d) If at the end of the five-year period identified in subdivision (c) of Section 65583, any percentage of the regional share allocation has not been constructed as provided pursuant to subdivision (a), or, after consultation with the department, the council of governments determines that the requirements of paragraphs (5) and (7) of subdivision (a) have not been substantially complied with, the council of governments shall add the unbuilt units to Napa County's regional share allocation for the planning period of the next periodic update of the housing element.

(e) Napa County shall not meet a percentage of its share of the regional share pursuant to subdivision (a) on or after June 30, 2007, unless a later enacted statute, that is enacted before June 30, 2007, deletes or extends that date.

**65585.** (a) In the preparation of its housing element, each city and county shall consider the guidelines adopted by the department pursuant to Section 50459 of the Health and Safety Code. Those guidelines shall be advisory to each city or county in the preparation of its housing element.

(b) At least 90 days prior to adoption of its housing element, or at least 60 days prior to the adoption of an amendment to this element, the planning agency shall submit a draft element or draft amendment to the department. The department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the draft in the case of an adoption or within 60 days of its receipt in the case of a draft amendment.

(c) In the preparation of its findings, the department may consult with any public agency, group, or person. The department shall receive and consider any written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

(d) In its written findings, the department shall determine whether the draft element or draft amendment substantially complies with the requirements of this article.

(e) Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by the department. If the department's findings are not available within the time limits set by this section, the legislative body may act without them.

(f) If the department finds that the draft element or draft amendment does not substantially comply with the requirements of this article, the legislative body shall take one of the following actions:

(1) Change the draft element or draft amendment to substantially comply with the requirements of this article.

(2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with the requirements of this article despite the findings of the department.

(g) Promptly following the adoption of its element or amendment, the planning agency shall submit a copy to the department.

(h) The department shall, within 90 days, review adopted housing elements or amendments and report its findings to the planning agency.

**65585.1.** (a) The San Diego Association of Governments (SANDAG), if it approves a resolution agreeing to participate in the self-certification process, and in consultation with the cities and county within its jurisdiction, its housing element advisory committee, and the department, shall work with a qualified consultant to determine the maximum number of housing units that can be constructed, acquired, rehabilitated, and preserved as defined in paragraph (11) of subdivision (e) of Section 33334.2 of the Health and Safety Code, and the maximum number of units or households that can be provided with rental or ownership assistance, by each jurisdiction during the third and fourth housing element cycles to meet the existing and future housing needs for low- and very low income households as defined in Sections 50079.5, 50093, and 50105 of the Health and Safety Code, and extremely low income households. The methodology for determining the maximum number of housing units that can be provided shall include a recognition of financial resources and regulatory measures that local jurisdictions can use to provide additional affordable lower income housing. This process is intended to identify the available resources that can be used to determine the maximum number of housing units each jurisdiction can provide. The process acknowledges that the need to produce housing for low-, very low, and extremely low income households may exceed available resources. The department and SANDAG, with input from its housing element advisory committee, the consultant, and local jurisdictions, shall agree upon definitions for extremely low income households and their affordable housing costs, the methodology for the determination of the maximum number of housing units and the number each jurisdiction can produce at least one year before the due date of each housing element revision, pursuant to paragraph (4) of subdivision (e) of Section 65588. If SANDAG fails to approve a resolution agreeing to participate in this pilot program, or SANDAG

and the department fail to agree upon the methodology by which the maximum number of housing units is determined, then local jurisdictions may not self-certify pursuant to this section.

(1) The "housing element advisory committee" should include representatives of the local jurisdictions, nonprofit affordable housing development corporations and affordable housing advocates, and representatives of the for-profit building, real estate and banking industries.

(2) The determination of the "maximum number of housing units" that the jurisdiction can provide assumes that the needs for low-, very low, and extremely low income households, including those with special housing needs, will be met in approximate proportion to their representation in the region's population.

(3) A "qualified consultant" for the purposes of this section means an expert in the identification of financial resources and regulatory measures for the provision of affordable housing for lower income households.

(b) A city or county within the jurisdiction of the San Diego Association of Governments that elects not to self-certify, or is ineligible to do so, shall submit its housing element or amendment to the department, pursuant to Section 65585.

(c) A city or county within the jurisdiction of the San Diego Association of Governments that elects to self-certify shall submit a self-certification of compliance to the department with its adopted housing element or amendment. In order to be eligible to self-certify, the legislative body, after holding a public hearing, shall make findings, based on substantial evidence, that it has met the following criteria for self-certification:

(1) The jurisdiction's adopted housing element or amendment substantially complies with the provisions of this article, including addressing the needs of all income levels.

(2) For the third housing element revision, pursuant to Section 65588, the jurisdiction met its fair share of the regional housing needs for the second housing element revision cycle, as determined by the San Diego Association of Governments.

In determining whether a jurisdiction has met its fair share, the jurisdiction may count each additional lower income household provided with affordable housing costs. Affordable housing costs are defined in Section 6918 for renters, and in Section 6925 for purchasers, of Title 25 of the California Code of Regulations, and in Sections 50052.5 and 50053 of the Health and Safety Code, or by the applicable funding source or program.

(3) For subsequent housing element revisions, pursuant to Section 65588, the jurisdiction has provided the maximum number of housing units as determined pursuant to subdivision (a), within the previous planning period.

(A) The additional units provided at affordable housing costs as defined in paragraph (2) in satisfaction of a jurisdiction's maximum number of housing units shall be provided by one or more of the following means:

(i) New construction.

(ii) Acquisition.

(iii) Rehabilitation.

(iv) Rental or ownership assistance.

(v) Preservation of the availability to lower income households of affordable housing units in developments which are assisted, subsidized, or restricted by a public entity and which are threatened with imminent conversion to market rate housing.

(B) The additional affordable units shall be provided in approximate proportion to the needs defined in paragraph (2) of subdivision (a).

(4) The city or county provides a statement regarding how its adopted housing element or amendment addresses the dispersion of lower income housing within its jurisdiction, documenting that additional affordable housing opportunities will not be developed only in areas where concentrations of lower income households already exist, taking into account the availability of necessary public facilities and infrastructure.

(5) No local government actions or policies prevent the development of the identified sites pursuant to Section 65583, or accommodation of the jurisdiction's share of the total regional housing need, pursuant to Section 65584.

(d) When a city or county within the jurisdiction of the San Diego Association of Governments duly adopts a self-certification of compliance with its adopted housing element or amendment pursuant to subdivision (c), all of the following shall apply:

(1) Section 65585 shall not apply to the city or county.

(2) In any challenge of a local jurisdiction's self-certification, the court's review shall be limited to determining whether the self-certification is accurate and complete as to the criteria for self-certification. Where there has not been a successful challenge of the self-certification, there shall be a rebuttable presumption of the validity of the housing element or amendment.

(3) Within six months after the completion of the revision of all housing elements in the region, the council of governments, with input from the cities and county within its jurisdiction, the housing element advisory committee, and qualified consultant shall report to the Legislature on the use and results of the self-certification process by local governments within its jurisdiction. This report shall contain data for the last planning period regarding the total number of additional affordable housing units provided by income category, the total number of additional newly constructed housing units, and any other information deemed useful by SANDAG in the evaluation of the pilot program.

(e) This section shall become inoperative on June 30, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

**65585.2.** Notwithstanding any other provision of law, any city or county that has a housing element that has been self-certified pursuant to the requirements of Section 65585.1 shall be considered to be fully eligible to participate in any program created by, or receiving funds through, the Housing and Emergency Shelter Trust Fund Act of 2002 in an identical manner and to the same degree, as those local jurisdictions deemed in substantial compliance with the requirements of this article by the Department of Housing and Community Development pursuant to Section 65585.

**65586.** Local governments shall conform their housing elements to the provisions of this article on or before October 1, 1981. Jurisdictions with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977, and located in Subchapter 3 (commencing with Section 6300) of Chapter 6 of Part 1 of Title 25 of the California Administrative Code, shall be deemed in compliance with this article as of its

effective date. A locality with a housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

**65587.** (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

**65588.** (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code,

that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding subdivision (b) or the date of adoption of the housing elements previously in existence, the dates of revisions for the housing element shall be modified as follows:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: December 31, 2000, for the third revision, and June 30, 2005, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: December 31, 2001, for the third revision, and June 30, 2006, for the fourth revision.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2002, for the third revision, and June 30, 2007, for the fourth revision.

(4) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2002, for the third revision, and June 30, 2007, for the fourth revision.

(5) Local governments within the regional jurisdiction of the San Diego Association of Governments: December 31, 1999, for the third revision cycle ending June 30, 1999, and June 30, 2004, for the fourth revision.

(6) All other local governments: December 31, 2003, for the third revision, and June 30, 2008, for the fourth revision.

(7) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.

**65588.1.** (a) The planning period of existing housing elements prepared pursuant to subdivision (b) of Section 65588 shall be extended through the housing element due date prescribed in subdivision (e) of Section 65588. Local governments shall continue to implement the housing program of existing housing elements and the annual review pursuant to Section 65400.

(b) The extension provided in this section shall not limit the existing responsibility under subdivision (b) of Section 65588 of any jurisdiction to adopt a housing element in conformance with this article.

(c) It is the intent of the Legislature that nothing in this section shall be construed to reinstate any mandates pursuant to Chapter 1143 of the Statutes of 1980 suspended by the Budget Act of 1993-94.

**65589.** (a) Nothing in this article shall require a city, county, or city and county to do any of the following:



(1) Expend local revenues for the construction of housing, housing subsidies, or land acquisition.

(2) Disapprove any residential development which is consistent with the general plan.

(b) Nothing in this article shall be construed to be a grant of authority or a repeal of any authority which may exist of a local government to impose rent controls or restrictions on the sale of real property.

(c) Nothing in this article shall be construed to be a grant of authority or a repeal of any authority which may exist of a local government with respect to measures that may be undertaken or required by a local government to be undertaken to implement the housing element of the local general plan.

(d) The provisions of this article shall be construed consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians.

**65589.3.** In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

**65589.5.** (a) The Legislature finds and declares all of the following:

(1) The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low- or moderate-income households or condition approval,

including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(6) The development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nothing in this section shall be construed to prohibit a local agency

from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(3) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(4) "Neighborhood" means a planning area commonly identified as such in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court

action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney fees and costs of suit to the plaintiff or petitioner who proposed the housing development, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled.

(l) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure, all or part of the record may be filed (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

**65589.6.** In any action taken to challenge the validity of a decision by a city, county, or city and county to disapprove a project or approve a project upon the condition that it be developed at a lower density pursuant to Section 65589.5, the city, county, or city and

county shall bear the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5.

**65589.7.** (a) The housing element adopted by the legislative body and any amendments made to that element shall be delivered to all public agencies or private entities that provide water services at retail or sewer services within the territory of the legislative body. When allocating or making plans for the allocation of available and future resources or services designated for residential use, each public agency or private entity providing water services at retail or sewer services, shall grant a priority for the provision of these available and future resources or services to proposed housing developments which help meet the city's, county's, or city and county's share of the regional housing need for lower income households as identified in the housing element adopted by the legislative body and any amendments made to that element.

(b) This section is intended to neither enlarge nor diminish the existing authority of a city, county or city and county in adopting a housing element. Failure to deliver a housing element adopted by the legislative body or amendments made to that element, to a public agency or private entity providing water services at retail or sewer services shall not invalidate any action or approval of a development project. The special districts which provide water services at retail or sewer services related to development, as defined in subdivision (e) of Section 56426, are included within this section.

(c) As used in this section, "water services at retail" means supplying water directly to the end user or consumer of that water, and does not include sale by a water supplier to another water supplier for resale.

**65589.8.** A local government which adopts a requirement in its housing element that a housing development contain a fixed percentage of affordable housing units, shall permit a developer to satisfy all or a portion of that requirement by constructing rental housing at affordable monthly rents, as determined by the local government.

Nothing in this section shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, or policy requiring that any housing development contain a fixed percentage of affordable housing units.

**65864.** The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may

include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

### Health and Safety Code Sections:

17922  
17958.5  
17980  
17995.3  
33334.4  
33413  
33490  
50079.5  
50093  
50105

**17922.** (a) Except as otherwise specifically provided by law, the building standards adopted and submitted by the department for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, and the other rules and regulations that are contained in Title 24 of the California Code of Regulations, as adopted, amended, or repealed from time to time pursuant to this chapter shall be adopted by reference, except that the building standards and rules and regulations shall include any additions or deletions made by the department. The building standards and rules and regulations shall impose substantially the same requirements as are contained in the most recent editions of the following uniform industry codes as adopted by the organizations specified:

(1) The Uniform Housing Code of the International Conference of Building Officials, except its definition of "substandard building."

(2) The Uniform Building Code of the International Conference of Building Officials.

(3) The Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.

(4) The Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials.

(5) The National Electrical Code of the National Fire Protection Association.

(6) Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials.

(b) In adopting building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for publication in the California Building Standards Code and in adopting other regulations, the department shall consider local conditions and any amendments to the uniform codes referred to in this section. Except as provided in Part 2.5 (commencing with Section 18901), in the absence of adoption by regulation, the most recent editions of the uniform codes referred to in this section shall be considered to be adopted one year after the date of publication of the uniform codes.

(c) Except as provided in Section 17959.5, local use zone requirements, local fire zones, building setback, side and rear yard requirements, and property line requirements are hereby specifically and entirely reserved to the local jurisdictions notwithstanding any requirements found or set forth in this part.



(d) Regulations other than building standards which are adopted, amended, or repealed by the department, and building standards adopted and submitted by the department for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, governing alteration and repair of existing buildings and moving of apartment houses and dwellings shall permit the replacement, retention, and extension of original materials and the continued use of original methods of construction as long as the hotel, lodginghouse, motel, apartment house, or dwelling, or portions thereof, or building and structure accessory thereto, complies with the provisions published in the California Building Standards Code and the other rules and regulations of the department or alternative local standards adopted pursuant to subdivision (b) of Section 13143.2 or Section 17958.5 and does not become or continue to be a substandard building. Building additions or alterations which increase the area, volume, or size of an existing building, and foundations for apartment houses and dwellings moved, shall comply with the requirements for new buildings or structures specified in this part, or in building standards published in the California Building Standards Code, or in the other rules and regulations adopted pursuant to this part. However, the additions and alterations shall not cause the building to exceed area or height limitations applicable to new construction.

(e) Regulations other than building standards which are adopted by the department and building standards adopted and submitted by the department for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 governing alteration and repair of existing buildings shall permit the use of alternate materials, appliances, installations, devices, arrangements, or methods of construction if the material, appliance, installation, device, arrangement, or method is, for the purpose intended, at least the equivalent of that prescribed in this part, the building standards published in the California Building Standards Code, and the rules and regulations promulgated pursuant to the provisions of this part in performance, safety, and for the protection of life and health. Regulations governing abatement of substandard buildings shall permit those conditions prescribed by Section 17920.3 which do not endanger the life, limb, health, property, safety, or welfare of the public or the occupant thereof.

(f) A local enforcement agency may not prohibit the use of materials, appliances, installations, devices, arrangements, or methods of construction specifically permitted by the department to be used in the alteration or repair of existing buildings, but those materials, appliances, installations, devices, arrangements, or methods of construction may be specifically prohibited by local ordinance as provided pursuant to Section 17958.5.

(g) A local ordinance may not permit any action or proceeding to abate violations of regulations governing maintenance of existing buildings, unless the building is a substandard building or the violation is a misdemeanor.

**17958.5.** Except as provided in Section 17922.6, in adopting the ordinances or regulations pursuant to Section 17958, a city or county may make such changes or modifications in the requirements contained in the provisions published in the California Building Standards Code and the other regulations adopted pursuant to Section 17922 as it determines, pursuant to the provisions of Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions.

For purposes of this subdivision, a city and county may make reasonably necessary modifications to the requirements, adopted pursuant to Section 17922, contained in the provisions of the code and regulations on the basis of local conditions.

**17980.** (a) If any building is constructed, altered, converted, or maintained in violation of any provision of, or of any order or notice that gives a reasonable time to correct that violation issued by an enforcement agency pursuant to, this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency shall, after 30 days' notice to abate the nuisance, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any building and has determined that the building is a substandard building or a building described in Section 17920.10, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building. The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require vacation and demolition or may itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done as scheduled.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option which cannot be completed within a reasonable period of time, as determined by the enforcement agency, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element.

(c) (1) Notwithstanding subdivision (b) and notwithstanding local ordinances, tenants in a residential building shall be provided notice of any violation described in subdivision (a) that affects the health and safety of the occupants and that violates Section 1941.1 of the Civil Code, an order of the code enforcement agency issued after inspection of the premises declaring the dwelling to be in violation of any provision described in subdivision (a), the enforcement agency's decision to repair or demolish, or the issuance of a building or demolition permit following the abatement order of an enforcement agency.

(2) Notice pursuant to this subdivision shall be provided to each affected residential unit by the enforcement agency that issued the order or notice, in the manner prescribed by subdivision (a) of Section 17980.6.

(d) All notices issued by the enforcement agency to correct violations or to abate nuisances shall contain a provision notifying the owner that, in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year. In addition, in Los Angeles County, the notice shall contain a provision notifying the owner that within 10 days of recordation of a notice of substandard conditions or similar document, the owner is required to comply with Section 17997.

(e) The enforcement agency may charge the owner of the building for its postage or mileage cost for sending or posting the notices required to be given by this section.

**17995.3.** Any person who is convicted pursuant to Section 17995 for a second or subsequent time within a five-year period for violations at the same property where such violations are determined by the trier of fact to be so extensive and of such a nature that the immediate health and safety of residents or the public is endangered and where the extent and nature of the violations are due to the defendant's habitual neglect of customary maintenance and display a flagrant lack of concern for the health and safety of residents and the public, shall be punishable by a fine not exceeding five thousand dollars (\$5,000) and by imprisonment of not less than six months but not exceeding one year, provided also that the trier of fact finds at least four serious violations of the following categories of violations are involved:

(a) Termination, extended interruption or serious defects of gas, water or electric utility systems provided such interruptions or termination is not caused by the tenant's failure to pay such gas, water or electric bills.

(b) Serious defects or lack of adequate space and water heating.

(c) Serious rodent, vermin or insect infestation.

(d) Severe deterioration, rendering significant portions of the structure unsafe or unsanitary.

(e) Inadequate numbers of garbage receptacles or service.

(f) Unsanitary conditions affecting a significant portion of the structure as a result of faulty plumbing or sewage disposal.

(g) Inoperable hallway lighting.

**33334.4.** (a) Except as specified in subdivision (d), each agency shall expend over each 10-year period of the implementation plan, as specified in clause (iii) of subparagraph (A) of paragraph (2) of subdivision (a) of Section 33490, the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of low income and housing for persons of very low income in at least the same proportion as the total number of housing units needed for each of those income groups bears to the total number of units needed for persons of moderate, low, and very low income within the community, as those needs have been determined for the community pursuant to Section 65584 of the Government Code. In determining compliance with this obligation, the agency may adjust the proportion by subtracting from the need identified for each income category, the number of units for persons of that income category that are newly constructed over the duration of the implementation plan with other locally controlled government assistance and without agency assistance and that are required to be affordable to, and occupied by, persons of the income category for at least 55 years for rental housing and

45 years for ownership housing, except that in making an adjustment the agency may not subtract units developed pursuant to a replacement housing obligation under state or federal law.

(b) Each agency shall expend over the duration of each redevelopment implementation plan, the moneys in the Low and Moderate Income Housing Fund to assist housing that is available to all persons regardless of age in at least the same proportion as the population under age 65 years bears to the total population of the community as reported in the most recent census of the United States Census Bureau.

(c) An agency that has deposited in the Low and Moderate Income Housing Fund over the first five years of the period of an implementation plan an aggregate that is less than two million dollars (\$2,000,000) shall have an extra five years to meet the requirements of this section.

(d) For the purposes of this section, "locally controlled" means government assistance where the community or other local government entity has the discretion and the authority to determine the recipient and the amount of the assistance, whether or not the source of the funds or other assistance is from the state or federal government. Examples of locally controlled government assistance include, but are not limited to, Community Development Block Grant Program (42 U.S.C. Sec. 5301 and following) funds allocated to a city or county, Home Investment Partnership Program (42 U.S.C. Sec. 12721 and following) funds allocated to a city or county, fees or funds received by a city or county pursuant to a city or county authorized program, and the waiver or deferral of city or other charges.

**33413.** (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the or a lower income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate

income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2, 33333.6, and 33333.10 at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost, to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (1), "substantially rehabilitated dwelling units" means all units substantially rehabilitated, with agency assistance. Prior to January 1, 2002, "substantially rehabilitated dwelling units" shall mean substantially rehabilitated multifamily rented dwelling units with three or more units regardless of whether there is agency assistance, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), "substantial rehabilitation" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the

units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

(c) (1) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units and 45 years for homeownership units, except as set forth in paragraph (2).

(2) Notwithstanding paragraph (1), the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units pursuant to this paragraph, expend funds to make affordable an equal number of units at the same income level as units sold pursuant to this paragraph. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(3) The requirements of this section shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

(4) If land on which the dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

**33413.** (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or



greater number of bedrooms as those destroyed or removed units at affordable housing cost within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost to, and occupied by, persons in the same or a lower income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to, and occupied by, persons in the same or a lower income category (low, very low, or moderate) as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10, at least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10, at least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have had to be available inside a project area.

(iii) To satisfy the provisions of this paragraph, the agency may aggregate new or rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B)

shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

(c) (1) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units and 45 years for homeownership units, except for the following:

(2) Notwithstanding paragraph (1), the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units under this paragraph, expend funds to make affordable an equal number of units at the same income level as units sold under this paragraph. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(3) The requirements of this section shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

(4) If land on which dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area.

Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and rehabilitated or substantially rehabilitated dwelling units, as applicable, for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall become operative on January 1, 2006.

**33490.** (a) (1) (A) On or before December 31, 1994, and each five years thereafter, each agency that has adopted a redevelopment plan prior to December 31, 1993, shall adopt, after a public hearing, an implementation plan that shall contain the specific goals and objectives of the agency for the project area, the specific programs, including potential projects, and estimated expenditures proposed to be made during the next five years, and

an explanation of how the goals and objectives, programs, and expenditures will eliminate blight within the project area and implement the requirements of Section 33333.10, if applicable, and Sections 33334.2, 33334.4, 33334.6, and 33413. After adoption of the first implementation plan, the parts of the implementation plan that address Section 33333.10, if applicable, and Sections 33334.2, 33334.4, 33334.6, and 33413 shall be adopted every five years either in conjunction with the housing element cycle or the implementation plan cycle. The agency may amend the implementation plan after conducting a public hearing on the proposed amendment. If an action attacking the adoption, approval, or validity of a redevelopment plan adopted prior to January 1, 1994, has been brought pursuant to Chapter 5 (commencing with Section 33500), the first implementation plan required pursuant to this section shall be adopted within six months after a final judgment or order has been entered. Subsequent implementation plans required pursuant to this section shall be adopted pursuant to the terms of this section, and as if the first implementation plan had been adopted on or before December 31, 1994.

(B) Adoption of an implementation plan shall not constitute an approval of any specific program, project, or expenditure and shall not change the need to obtain any required approval of a specific program, project, or expenditure from the agency or community. The adoption of an implementation plan shall not constitute a project within the meaning of Section 21000 of the Public Resources Code. However, the inclusion of a specific program, potential project, or expenditure in an implementation plan prepared pursuant to subdivision (c) of Section 33352 in conjunction with a redevelopment plan adoption shall not eliminate analysis of those programs, potential projects, and expenditures in the environmental impact report prepared pursuant to subdivision (k) of Section 33352 to the extent that it would be otherwise required. In addition, the inclusion of programs, potential projects, and expenditures in an implementation plan shall not eliminate review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), at the time of the approval of the program, project, or expenditure, to the extent that it would be otherwise required.

(2) (A) A portion of the implementation plan shall address the agency housing responsibilities and shall contain a section addressing Section 33333.10, if applicable, and Sections 33334.2, 33334.4, and 33334.6, the Low and Moderate Income Housing Fund, and, if subdivision (b) of Section 33413 applies, a section addressing agency-developed and project area housing. The section addressing the Low and Moderate Income Housing Fund shall contain:

(i) The amount available in the Low and Moderate Income Housing Fund and the estimated amounts which will be deposited in the Low and Moderate Income Housing Fund during each of the next five years.

(ii) A housing program with estimates of the number of new, rehabilitated, or price-restricted units to be assisted during each of the five years and estimates of the expenditures of moneys from the Low and Moderate Income Housing Fund during each of the five years.

(iii) A description of how the housing program will implement the requirement for expenditures of moneys in the Low and Moderate Income Housing Fund over a 10-year period for various groups as required by Section 33334.4. For project areas to which subdivision (b) of Section 33413 applies, the 10-year period within which Section 33334.4 is required to be implemented shall be the same 10-year period within which

subdivision (b) of Section 33413 is required to be implemented. Notwithstanding the first sentence of Section 33334.4 and the first sentence of this clause, in order to allow these two 10-year time periods to coincide for the first time period, the time to implement the requirements of Section 33334.4 shall be extended two years, and project areas in existence on December 31, 1993, shall implement the requirements of Section 33334.4 on or before December 31, 2014, and each 10 years thereafter rather than December 31, 2012. For project areas to which subdivision (b) of Section 33413 does not apply, the requirements of Section 33334.4 shall be implemented on or before December 31, 2014, and each 10 years thereafter.

(iv) This requirement to include a description of how the housing program will implement Section 33334.4 in the implementation plan shall apply to implementation plans adopted pursuant to subdivision (a) on or after December 31, 2002.

(B) For each project area to which subdivision (b) of Section 33413 applies, the section addressing the agency developed and project area housing shall contain:

(i) Estimates of the number of new, substantially rehabilitated or price-restricted residential units to be developed or purchased within one or more project areas, both over the life of the plan and during the next 10 years.

(ii) Estimates of the number of units of very low, low-, and moderate-income households required to be developed within one or more project areas in order to meet the requirements of paragraph (2) of subdivision (b) of Section 33413, both over the life of the plan and during the next 10 years.

(iii) The number of units of very low, low-, and moderate-income households which have been developed within one or more project areas which meet the requirements of paragraph (2) of subdivision (b) of Section 33413.

(iv) Estimates of the number of agency developed residential units which will be developed during the next five years, if any, which will be governed by paragraph (1) of subdivision (b) of Section 33413.

(v) Estimates of the number of agency developed units for very low, low-, and moderate-income households which will be developed by the agency during the next five years to meet the requirements of paragraph (1) of subdivision (b) of Section 33413.

(C) The section addressing Section 33333.10, if applicable, and Section 33334.4 shall contain all of the following:

(i) The number of housing units needed for very low income persons, low-income persons, and moderate-income persons as each of those needs have been identified in the most recent determination pursuant to Section 65584 of the Government Code, and the proposed amount of expenditures from the Low and Moderate Income Housing Fund for each income group during each year of the implementation plan period.

(ii) The total population of the community and the population under 65 years of age as reported in the most recent census of the United States Census Bureau.

(iii) A housing program that provides a detailed schedule of actions the agency is undertaking or intends to undertake to ensure expenditure of the Low and Moderate Income Housing Fund in the proportions required by Section 33333.10, if applicable, and Section 33334.4.

(iv) For the previous implementation plan period, the amounts of Low and Moderate Income Housing Fund moneys utilized to assist units affordable to, and occupied by, extremely low income households, very low income households, and low-income

households; the number, the location, and level of affordability of units newly constructed with other locally controlled government assistance and without agency assistance and that are required to be affordable to, and occupied by, persons of low, very low, or extremely low income for at least 55 years for rental housing or 45 years for homeownership housing, and the amount of Low and Moderate Income Housing Fund moneys utilized to assist housing units available to families with children, and the number, location, and level of affordability of those units.

(3) If the implementation plan contains a project that will result in the destruction or removal of dwelling units that will have to be replaced pursuant to subdivision (a) of Section 33413, the implementation plan shall identify proposed locations suitable for those replacement dwelling units.

(4) For a project area that is within six years of the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2, 33333.6, 33333.7, or 33333.10, the portion of the implementation plan addressing the housing responsibilities shall specifically address the ability of the agency to comply, prior to the time limit on the effectiveness of the redevelopment plan, with subdivision (a) of Section 33333.8, subdivision (a) of Section 33413 with respect to replacement dwelling units, subdivision (b) of Section 33413 with respect to project area housing, and the disposition of the remaining moneys in the Low and Moderate Income Housing Fund.

(b) For a project area for which a redevelopment plan is adopted on or after January 1, 1994, the implementation plan prepared pursuant to subdivision (c) of Section 33352 shall constitute the initial implementation plan and thereafter the agency after a public hearing shall adopt an implementation plan every five years commencing with the fifth year after the plan has been adopted. Agencies may adopt implementation plans that include more than one project area.

(c) Every agency, at least once within the five-year term of the plan, shall conduct a public hearing and hear testimony of all interested parties for the purpose of reviewing the redevelopment plan and the corresponding implementation plan for each redevelopment project within the jurisdiction and evaluating the progress of the redevelopment project. The hearing required by this subdivision shall take place no earlier than two years and no later than three years after the adoption of the implementation plan. For a project area that is within three years of the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2, 33333.6, 33333.7, or 33333.10, the review shall specifically address those items in paragraph (4) of subdivision (a). An agency may hold one hearing for two or more project areas if those project areas are included within the same implementation plan.

(d) Notice of public hearings conducted pursuant to this section shall be published pursuant to Section 6063 of the Government Code, mailed at least three weeks in advance to all persons and agencies that have requested notice, and posted in at least four permanent places within the project area for a period of three weeks. Publication, mailing, and posting shall be completed not less than 10 days prior to the date set for hearing.

**50079.5.** (a) "Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of

1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.

(b) "Lower income households" includes very low income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.

(c) As used in this section, "area median income" means the median family income of a geographic area of the state.

**50093.** "Persons and families of low or moderate income" means persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of the Business and Transportation Agency, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify a substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.

"Persons and families of low or moderate income" includes very low income households, as defined in Section 50105, extremely low income households, as defined in Section 50106, and lower income households as defined in Section 50079.5, and includes persons and families of extremely low income, persons and families of very low income, persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:

(a) "Persons and families of low income" or "persons of low income" means persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(b) "Persons and families of moderate income" or "middle-income families" means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

(c) "Persons and families of median income" means persons and families whose income does not exceed the area median income, as adjusted by the department for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

As used in this section, "area median income" means the median family income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. In the event these federal determinations of area median income are



discontinued, the department shall establish and publish as regulations income limits for persons and families of median income for all geographic areas of the state at 100 percent of area median income, and for persons and families of low or moderate income for all geographic areas of the state at 120 percent of area median income. These income limits shall be adjusted for family size and shall be revised annually.

For purposes of this section, the department shall file, with the Office of Administrative Law, any changes in area median income and income limits determined by the United States Department of Housing and Urban Development, together with any consequent changes in other derivative income limits determined by the department pursuant to this section. These filings shall not be subject to Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, but shall be effective upon filing with the Office of Administrative Law and shall be published as soon as possible in the California Regulatory Code Supplement and the California Code of Regulations.

The department shall establish and publish a general definition of income, including inclusions, exclusions, and allowances, for qualifying persons under the income limits of this section and Sections 50079.5, 50105, and 50106 to be used where no other federal or state definitions of income apply. This definition need not be established by regulation.

Nothing in this division shall prevent the agency or the department from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for programs of the agency or department, as the case may be.

**50105.** (a) "Very low income households" means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. These qualifying limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for very low income households for all geographic areas of the state at 50 percent of area median income, adjusted for family size and revised annually.

(b) "Very low income households" includes extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.

(c) As used in this section, "area median income" means the median family income of a geographic area of the state.